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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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PACIFIC COAST COAL COMPANY, a corporation, et al. Claimants,

Appellants,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

Appellee.

UNITED STATES OF AMERICA,

Appellant,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

Appellee.

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**Apostles on Appeals**

In Twelve Volumes

**VOLUME II**

Pages 449 to 952

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PAUL A. GIBSON, CLERK

Upon Appeals from the District Court of the United States for the Western District of Washington, Northern Division.



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is more convenient to take that up tomorrow the Court is agreeable to that.

Mr. Bogle: That is quite satisfactory. If Your Honor please, counsel have agreed to a daily transcript of the proceedings, and the suggestion has been made that if Your Honor desires a copy that we will make arrangements for it.

The Court: The Court would like to express satisfaction with that arrangement, and to express the desire of the Court to have a daily transcript of the proceedings.

Mr. Bogle: That is satisfactory.

The Court: I hope that it will be convenient for the reporters to let me have that as soon after the close of the daily proceedings as possible. What have you to suggest at this time, if anything, with respect to your estimate of the time that you think the case may reasonably consume in the trial?

Mr. Bogle: Mr. Jones just asked me that question, and I told him I thought possibly a week, or not over ten days, depending upon the cross-examination.

The Court: What information have the Claimants on that?

Mr. Ryan: Well, we have no idea how many witnesses the ship owner has or how long they will take. Does counsel mean a week or ten days for his witnesses? [516]

Mr. Bogle: I think we should be finished in a week.

The Court: Depending, as he said, on the cross-examination.

Mr. Bogle: I do not mean to say four days.

Mr. Ryan: In a case of this sort, where practically nothing has been produced before the trial begins, the witnesses will necessarily, under the ordinary practice, be subjected to rather full cross-examination, because that is the only recourse of the Claimants under those circumstances. I should say that our case will be shorter than that of the Petitioner.

The Court: The reason the Court is interested in that at this time, and will continue to be, is because I am advised that there are perhaps two criminal cases on the calendar of the Court where the defendants are in jail, and if counsel's estimate of the time to be consumed, likely to be consumed in the trial of this case changes in any way during the progress of the trial, as soon as counsel are advised of any condition that seems to affect their judgment as to the length of time of the trial I would be very glad to have you volunteer such advice to the Court as time may develop on that, so that the Court may have the benefit of that information in arranging other matters on the trial calendar of the Court.

Mr. Bogle: So that I may not be misunderstood, Your Honor, in making the estimate of a week I do not mean that it would be at the conclusion of this week, but I meant about seven trial days.

The Court: The Court would like to say that the trial work of this Court usually is Tuesday to Friday, inclusive, and from about ten o'clock in the forenoon until twelve [517] at noon, and then from two o'clock until about four-thirty in the afternoon.

Mr. Ryan: I may say, Your Honor, that I was in a similar case in Portland, Oregon, about two months ago, and counsel for the Shipowners made somewhat the similar statement that they have made this morning. The case actually took five weeks, and we sat every night except Saturday and Sunday for the last four weeks of the trial. So I do not want Your Honor to be surprised if it takes longer.

The Court: The Court does not expect counsel to be limited by anything that is said here. It is merely tentative, with the view of trying to advise the Court so the Court can have the benefit of such information for whatever it is worth in arranging other matters on the trial calendar of the Court.

Mr. Ryan: Of course it will expedite the trial a lot if tomorrow morning the Petitioner is in good faith ready to comply with the notices to produce which have been served. If the documents which are noticed are produced and we are given an opportunity here at a fairly early stage of the trial to examine them, that will make the cross-examination more concise, and will bring the whole matter to a head much faster than if it comes in piecemeal or if they are not produced until late and we have to cover all possible situations. I simply do not want to press the matter while Mr. Pellegrini is not

available to argue his side of the case this morning.

Mr. Bogle: For your information, Mr. Ryan, I would like to say that we have no intention of complying with the notice [518] to produce as the matter now stands.

Mr. Ryan: I didn't say that. I mean are you ready to comply if the Court orders you to?

The Court: That matter will be disposed of, and further discussion of it is unnecessary at this time.

Mr. Bogle: If Your Honor please, this matter has been before the Court in the form of preliminary motions on a number of occasions, and I assume that Your Honor is thoroughly familiar with the pleadings and the issues, and that no extended statement is necessary.

Briefly, the action was instituted in this Court by the Alaska Steamship Company to limit its liability in connection with any loss or damage resulting from the stranding and total loss of ship and cargo on a reef on Zayas Island on May 19, 1935.

The Petitioner alleges its ownership of the "Denali", alleges that she was properly manned, supplied and seaworthy in every respect at the inception of the voyage on which she was lost; that she stranded and was lost without negligence on the part of the Petitioner, its officers or employees, and that, therefore, the Petitioner is entitled to complete exoneration from all liability.

In the alternative they allege that if any negligence or unseaworthiness existed, such negligence or unseaworthiness was not within the privity or

knowledge of the Shipowner, within the Limitation Statutes, and, therefore, limitation should be granted.

In this proceeding the Petitioner has surrendered to a Trustee, Mr. Charles E. Allen, appointed by this Court, all of its interest in the Steamship "Denali", and all [519] abandoned freight on the voyage upon which she was lost?

The Claimants by general denial have placed at issue the allegations of the petition with reference to limitation, and by their claims they have alleged, in effect, delivery of cargo at port of loading, and non-delivery at destination. The only affirmative allegation is that the vessel stranded on a charted reef, that is, a reef which was shown on the regular government charts.

There are two issues presented by the pleadings, the one of primary negligence, as to which the burden of proof is clearly upon the Claimants, and the other issue is that of the Petitioner's right to limitation, as to which the burden of proof is clearly upon the Petitioner. If the Court find on the issue of exoneration that there is no liability, then of course there is nothing to limit and the proceeding is then concluded.

Ordinarily, it would seem proper for the Claimants, having the primary burden, to start the proceedings, but in this case the Claimants have alleged a prima facie case of delivery of cargo, and non-delivery of cargo at destination, which is not disputed, and the two issues are so interwoven that



the Petitioner is prepared to proceed on both issues, if the parties and the Court think that is the proper method.

The Court: The Petitioner being willing to do so, you may do that.

Mr. Bogle: Mr. Wilson, will you take the stand.

The Court: May I interrupt you just a minute. We are glad to have present and in attendance upon the Court all persons, members of the public and others, but as the Court [520] previously suggested the acoustics in the room are very poor, and that makes it necessary for the Court to request all of those attending to kindly refrain from whispered and other conversations during the course of the proceedings. The officers of the court, particularly, will be kind enough, I am sure, to observe this request by the Court, and all others present. You may now be sworn.

THOMAS B. WILSON,

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Bogle:

Q. Will you state your name?

A. Thomas B. Wilson.

Q. Mr. Wilson, in May, 1935, were you connected in any official capacity with the Alaska Steamship Company?

A. I was. I was Vice President and General Manager.

(Testimony of Thomas B. Wilson.)

Mr. Bogle: I might state at this point, Your Honor, that it has been stipulated by the parties, among other things, that as to the corporate existence of the Petitioner no proof is required.

Mr. Ryan: That is correct.

Mr. Bogle: And as to the ownership of the steamer "Denali" by the Petitioner.

Mr. Ryan: The stipulation is in writing and governs both sides.

Mr. Bogle: Yes. I want as a preliminary. [521]

Mr. Ryan: Yes.

Q. (By Mr. Bogle) Mr. Wilson, when did you first become associated with the Alaska Steamship Company?

A. June 1, 1933.

Q. By whom were you employed?

A. By Stephen Birch, president of the corporation.

Q. That is, the Alaska Steamship Company?

A. Yes.

Q. Where does Mr. Birch reside?

A. New York City.

Q. At the time you joined the company, June 1, 1933, do you know who the officers of the company were?

A. Yes. Stephen Birch, President; E. T. Standard, First Vice President; myself, as Second Vice President and General Manager; W. T. Ford, Secretary and Auditor, and C. T. Ulrich, Treasurer. I think that is all.

(Testimony of Thomas B. Wilson.)

Q. At the time of your employment where did Mr. Birch and Mr. Stannard reside?

A. New York.

Q. Where is the head office and principal place of business of the Alaska Steamship Company?

A. Seattle, Washington.

Q. Mr. Wilson, in May—say May 13th to 16th, inclusive, did you occupy the same position with the Alaska Steamship Company?

A. I did.

Q. Were the other officers at that time the same as you have just mentioned?

A. They were.

Q. What connection did Mr. Birch have with the Kennecott [522] Copper Corporation?

A. He was chairman of the Board of Directors of that company, and president of the Alaska Steamship Company.

Q. What duties did he have or perform in connection with the Alaska Steamship Company in May, 1935?

A. He had no active duties. He was semi-retired.

Q. I might ask you what connection is there, or was there in May, 1935, between the Kennecott Copper Corporation and the Alaska Steamship Company?

A. I think their ownership was 100 per cent on that date.

Q. That is, the Kennecott Copper Corporation owned 100 per cent of the stock of the Alaska Steamship Company?



(Testimony of Thomas B. Wilson.)

A. Correct.

Q. What position in May, 1935, did Mr. Standard hold with the Kennecott Copper Corporation?

A. He was president of that corporation, and first vice-president of the Alaska Steamship Company.

Q. What duties were delegated to you as second vice-president and general manager of the Alaska Steamship Company, and what duties did you perform in 1935?

Mr. Ryan: Objected to on the ground that if such delegation was in writing the writing should be produced.

Q. Well, I will put it this way; at the time of your employment, which I take it was in New York and some time prior to June 1st—

A. (Interposing) In April, 1933.

Q. In connection with that employment by Mr. Birch were your duties designated?

A. Specifically.

Q. Was that in writing or orally? [523]

A. Orally.

Q. Were those duties ever changed?

A. No, sir.

Q. Mr. Wilson, you are not connected as vice-president and general manager with the Alaska Steamship Company at the present time?

A. No.

Q. Did you resign?

A. I did; August 1st, 1937.

(Testimony of Thomas B. Wilson.)

Q. What were your duties as designated at the time of your employment, and as in effect in May, 1935?

A. To be in complete charge of the management of the company, its operations and conduct on the ground.

Q. Who was the highest executive of the company residing in Seattle, the place of operation?

A. Myself.

Q. To what extent, if any, did Mr. Stannard, exercise supervision over this company?

A. Questions of major policy and questions of finance, important finance, or capital expenditures that were large, it was my custom to take those questions up with him as representative of the Owners, before acting.

Q. With respect to operating, maintenance and repair matters, who had supervision?

A. That was completely reposed in myself.

Q. Mr. Wilson, do you remember who the directors of this company were in May, 1935?

A. I believe I can enumerate them.

Q. Will you please do so.

A. Stephen Birch, E. T. Stannard, Thomas B. Wilson, W. T. [524] Ford, L. W. Baker, M. McKinstrey, Thomas Cochrane, George Whitney—that is eight, and there should be nine.

Q. Might I suggest that I was a director?

A. I beg your pardon. Lawrence Bogle.

(Testimony of Thomas B. Wilson.)

Q. Mr. Wilson, in May, 1935, where did Mr. Whitney and Mr. Cochrane—you have already stated as to Mr. Stannard and Mr. Birch—and Mr. Ulrich; where did they reside?

A. All in New York.

Q. Where were the directors' meetings held?

A. In Seattle.

Q. Mr. Wilson, in May, 1935, in what business was the Alaska Steamship Company engaged?

A. In the common carriage of passengers and freight between Puget Sound points and points in Alaska.

Q. What portions of Alaska did the company serve as a common carrier by water?

A. We served the whole coast line, beginning as far north as there was any excuse to go, above the Arctic Circle, and continuing along the coast to Ketchikan on the South.

Q. Have you a map showing the route served by the company?

A. I have. [525]

Mr. Bogle: I want to have that marked. Well, I will have this other one marked.

(Document marked for identification Petitioner's Exhibit No. 1)

Q. (By Mr. Bogle) Mr. Wilson, referring to this map marked Petitioner's Exhibit 1 for identification, was that compiled and circulated by the Alaska Steamship Company?

A. It was.

(Testimony of Thomas B. Wilson.)

Q. Does it show the main routes covered by its steamers?

A. It does.

Mr. Ryan: Could I get a copy of that?

Mr. Bogle: I can get one for you. I have not one here. I will give you this one just in a minute when I get through with it.

Q. (By Mr. Bogle) What general subdivisions was the service of the company divided into?

A. It was divided between what we term our regular scheduled passenger service or liner service, in one class, the other class being an irregular service to irregular ports when traffic warranted or justified it.

Q. Now, the red lines shown on Petitioner's Exhibit "1" for identification covers what portion of your service?

A. It covers the regular scheduled service routes.

Q. And into what areas for traffic purposes do you divide the Territory of Alaska?

The Court: As shown by that exhibit for identification?

Mr. Bogle: This shows it all, Your Honor. [526] There are three divisions that they use for traffic purposes.

A. Well, our natural divisions geographically are Southeastern Alaska—

Q. (Interposing) Is that from Seattle to Juneau and way ports?

(Testimony of Thomas B. Wilson.)

A. Well, that is really from Seattle to Skagway on the north.

Q. Yes.

A. Including all of the inside passage or protected water area.

Q. And what is the second division?

A. The second division is termed Southwestern Alaska.

Q. That covers what area?

A. That covers from Icy Straits on the south, across the Gulf and the shoreline embracing Prince William Sound, Kenai Peninsula and Kodiak Island.

Q. Icy Straits, so that we will have it clear, is where the steamers go across the Gulf of Alaska after leaving Juneau?

A. Correct.

Q. Now, what do you designate the northern area as far as and including Nome?

A. That is the Bering Sea and Arctic Ocean area. It is operated during the summer season only.

Q. Why is that?

A. On account of navigation and the water freezing up.

Q. Now, as to your regular service covered by liners, do you have a printed schedule of the sailings?

A. We do. [527]

Mr. Bogle: I will offer this in evidence, if Your Honor please.

(Testimony of Thomas B. Wilson.)

The Court: The offer is now made.

Mr. Ryan: May I see it?

Mr. Bogle: It is what you have there.

Mr. Ryan: Oh, I see.

Mr. Bogle: It is what you have there that I am offering.

Mr. Ryan: Oh, I see. I have no objection.

The Court: Petitioner's Exhibit 1 is now admitted.

(Map received in evidence as Petitioner's Exhibit No. 1.)

Q. (By Mr. Bogle) Have you a copy of that printed schedule—the sailings to regular ports?

A. I have.

Q. May I have it a minute, Mr. Wilson?

A. Yes (handing document to Mr. Bogle). That is the 1935 spring and summer schedule.

Mr. Bogle: Well, it is the 1935 one that I want. I will have that marked.

(Document marked for identification Petitioner's Exhibit "2".)

Mr. Ryan: May I see a copy, Mr. Bogle?

Mr. Bogle: In just a minute. I will get you a copy just as soon as I have it marked.

Mr. Ryan: Now, I object——

Mr. Bogle: (Interposing) I have not offered it yet. [528]

Mr. Ryan: I thought you had.

Mr. Bogle: No. I just had it marked for identification.



(Testimony of Thomas B. Wilson.)

Q. (By Mr. Bogle) Mr. Wilson, referring to Petitioner's Exhibit 2 for identification, is that the printed schedule of your regular 1935 sailings?

A. Yes. This is an official printed copy.

The Court: May I interrupt you just a minute? Mr. Reporter, where the Court used the word "Plaintiff" in referring to the number of the exhibit and ruled upon its admission, will you substitute the word "Petitioner's" for "Plaintiff's"? Proceed.

Q. (By Mr. Bogle) When, Mr. Wilson, are these schedules fixed and when are the printed schedules—when are the schedules printed and distributed? I do not mean the date, but the time of the year.

A. For example, these spring and summer schedules are studied out and fixed about the end of the preceding year, and they are printed and distributed in January of the season covered, which in this case would be distributed in January, 1935.

Q. Please turn to pages 12 and 13 of that schedule, Petitioner's Exhibit 2 for identification. Are those your printed regular scheduled sailings for the southeastern and southwestern routes?

A. Yes, sir.

Q. In the year 1935?

A. Yes, sir.

Q. And I suppose that in here are your scheduled sailings for the Bering Sea route? [529]

A. Correct. They are printed on page 12.

(Testimony of Thomas B. Wilson.)

Q. On page 12?

A. Yes, sir.

Q. Now, do you operate any service, or did you in 1935 operate any service other than the scheduled sailings shown in Petitioner's Exhibit for identification 2?

A. We operated a great many schedules and ships that season that are not printed in here.

Mr. Bogle: Now, Mr. Ryan, I will offer this in evidence.

The Court: Petitioner's Exhibit 2 is offered in evidence.

Mr. Ryan: For what purpose is this being offered, Mr. Bogle?

Mr. Bogle: For two purposes, Mr. Ryan. It is to show the nature of the business which will develop as we go along, the fact that it is a seasonal business, and that the "Denali" was not one of the regular line steamers but was one of the irregular steamers that was not sailing on any regular schedule but sailing as business offered.

Mr. Ryan: May I ask a few preliminary questions of this witness with reference to this before having to state my grounds for objection?

The Court: Relating only to the proper authentication or identification of the offered exhibit.

Mr. Ryan: That is all I want to ask him about. Does this pamphlet cover—isn't there another schedule that is issued to prospective shippers of cargo on your vessels? [530]



(Testimony of Thomas B. Wilson.)

Mr. Bogle: I object to that, if Your Honor please.

The Court: Objection sustained. That relates——

Mr. Bogle: (Interposing) To something else.

The Court: Yes. That relates to something else, and it is improper.

Mr. Ryan: Does this pamphlet relate to the steamship "Denali"?

The Witness: No.

Mr. Ryan: When was this pamphlet right here issued?

The Witness: Well, as near as I can——

Mr. Ryan: (Interposing) Do you know. I do not ask you to guess.

The Witness: No, I cannot say the date that it was actually issued.

Mr. Ryan: Wasn't this pamphlet issued to prospective passengers as distinguished from prospective shippers?

The Witness: Both.

Mr. Ryan: I don't want—is this pamphlet the only schedule of your sailings that you issued?

Mr. Bogle: That is objected to. We will go into that.

Mr. Ryan: All right. I think that that bears on this matter.

The Court: Yes. That objection is overruled.

The Witness: We issue various schedules through various means.

Mr. Ryan: I object to the document on the ground

(Testimony of Thomas B. Wilson.)

[531] that under the witness' testimony he does not know when this thing was issued, and on the ground that it is not complete because it does not purport to be fairly representative of the schedules of the company taken as a whole, the witness having said that there were various other schedules that were issued, and he having said that this does not relate to the Steamship "Denali", and therefore the document is not properly proved; and it is incompetent, irrelevant and immaterial, the schedules relating to the Steamship "Denali", and which were sent out, are not produced, and the witness is not examined about them, and there is no proper foundation laid for the asking of this question.

Mr. Bogle: I cannot produce it all at one time. We have to produce these schedules and documents as we go along. May I ask Mr. Wilson——

The Court: (Interrupting) There is one objection, Mr. Bogle, which I think should have your response, and that is that the witness did not know when it was issued.

Mr. Bogle: I was going to ask him that. He said that they were issued as a rule around January 1st.

Q. (By Mr. Bogle) Now I will ask you if you know of your own knowledge if that was issued before February 1, 1935?

A. It was.

The Court: Was it in use during that shipping season, including the summer and month of May, 1935?

(Testimony of Thomas B. Wilson.)

The Witness: It was, Your Honor.

Q. (By Mr. Bogle) Was that the schedule upon which all of your liner steamers sailed during the entire season of 1935? [532]

A. Yes, sir.

The Court: The objection is overruled.

Petitioner's Exhibit 2 is now admitted.

Mr. Ryan: May I have—well, all right.

(Printed schedule of regular 1935 sailings of the Alaska Steamship Company, previously marked for identification Petitioner's Exhibit 2, received in evidence as Petitioner's Exhibit No. 2.)

Q. (By Mr. Bogle) Mr. Wilson, would you describe to the Court with a little detail the nature of the business of the Alaska Steamship Company, including its freight and passenger business; when the freight moves and when the passengers move, and the general nature of how you operate your steamers to cover that movement.

A. Well, beginning with January 1st, the calendar year basis, January and February are what we call the mid-winter season, and we operate on the lowest ebb, simply the regular scheduled ships which are operated approximately on once a week sailing. With those we operate one or two freighters, taking up the necessary fuel, coal, and matters of that character. Then beginning in March, the cannery season——

(Testimony of Thomas B. Wilson.)

Q. (Interposing) Before we get into that, Mr. Wilson, have you any regularly printed schedule for the sailings of your freighters which are published in advance such as this schedule, Petitioner's Exhibit 2?

A. No, we have no regular printed schedule of freighters. On our cards we say that our freighter service will be operated approximately ever so often. [533]

Q. Go ahead with the rest of your answer.

A. Taking up with March, which is the beginning of the cannery season looking to the salmon canneries and herring plants through the territory, the first supplies and equipment are moved in for the early preparation. That usually creates the necessity of "breaking out" as we term it, an extra freighter or two out of the shipyard to take these extraordinary supplies north. I say "extraordinary" in that they call at irregular ports where our regular scheduled ships do not go.

That gradually increases in volume as the spring comes on until we have all of our ships running.

The peak of that cannery season, northbound, is usually in June. The southbound peak is usually in August, and terminating about the middle of October.

Q. What is the volume or flow of your passenger traffic?

A. During the mid-winter season, or what we term January and February, there are only the

(Testimony of Thomas B. Wilson.)

regular inhabitants of Alaska that are traveling back and forth on their own business.

Beginning along in March the first members of the cannery plants begin to go north for the purpose of rehabilitation and preparatory work for the season.

The first tourists start about the middle of May, and the peak of the tourist travel season is about the middle of July, and it very sharply terminates about the last week of August.

Following the termination of the tourist travel of course in the fall the cannery crews and the people [534] who are seasonal workers in Alaska start coming out, in September and October, and they are pretty well out by November.

Q. Then what is the nature of your service from, say, early October until March?

A. Just the necessary regular scheduled ships to take care of mail and food supplies.

Q. Is that your liner ships as shown on this Petitioner's Exhibit 1, the map, and the schedules as shown on Petitioner's Exhibit 2?

A. Yes, sir.

Q. That is practically the only service you maintain during that season, along in October until March?

A. Correct.

Q. Mr. Wilson, in May of 1935 how many vessels, and of what tonnage, were owned by the Alaska Steamship Company?

(Testimony of Thomas B. Wilson.)

A. We owned nineteen vessels, and their tonnage—their gross registered tonnage was 57,600 tons.

Q. Have you a statement showing the names of those vessels?

A. I have. Not being able to keep that detail in mind I have had my assistant prepare these from the records of the company, and from my knowledge they appear to be accurate (produces document and hands same to Mr. Bogle).

Mr. Bogle: I will have that marked as Petitioner's Exhibit 3 for identification.

(Document marked for identification Petitioner's Exhibit No. 3.)

Q. (By Mr. Bogle) Mr. Wilson, referring to Petitioner's Exhibit 3 for identification, is that a list of names and gross tonnage of the vessels owned by the Alaska [535] Steamship Company in 1935?

A. It is.

Mr. Bogle: I will offer that in evidence.

Mr. Ryan: No objection.

The Court: Petitioner's Exhibit 3 is admitted.

(List of names and gross tonnage of the vessels owned by the Alaska Steamship Company received in evidence as Petitioner's Exhibit No. 3.)

Q. (By Mr. Bogle) Mr. Wilson, have you a list of the vessels owned by the Alaska Steamship Com-



(Testimony of Thomas B. Wilson.)

pany which were actually in operation on May 16, 1935?

A. I have. I had it similarly prepared.

Mr. Bogle: I will have this marked for identification.

(Document marked for identification Petitioner's Exhibit No. 4.)

Q. (By Mr. Bogle) This list shows that there were ten vessels out of the whole fleet of nineteen which were in operation on May 16, 1935.

A. Correct.

Mr. Bogle: I will offer this in evidence.

Mr. Ryan: No objection.

The Court: Petitioner's 4 is admitted.

(Document, list showing ten vessels in operation on May 16, 1935, received in evidence as Petitioner's Exhibit No. 4.)

Q. (By Mr. Bogle) When your vessels were not actually in operation where were they laid up?

A. We had a shipyard in West Seattle where the vessels were [536] tied up and laid up there.

Q. That is located where, with reference to the main office of the company?

A. On the opposite side of the bay, over on the shore-line of what is known as West Seattle.

Q. Where is the—or, rather, in 1935 where was the executive and operating office of the Alaska Steamship Company located?

A. At Pier 2, Seattle.

(Testimony of Thomas B. Wilson.)

Q. Have you compiled, or had compiled a statement of the personnel of the Alaska Steamship Company, broken down into departments?

A. I have had.

Q. As of May 16, 1935, as to the number of your employees?

A. Yes, sir.

Q. May I see that?

(Witness produces document)

Mr. Bogle: I will have that marked for identification.

(Document marked for identification Petitioner's Exhibit No. 5.)

Q. (By Mr. Bogle) Mr. Wilson,——

Mr. Ryan: (Interposing) Are you offering this?

Mr. Bogle: Not yet.

Q. (By Mr. Bogle) Mr. Wilson, as of May 16, 1935, what was your approximate number of employees ashore, including officials and executives?

A. 298 this statement shows, which I believe to be correct.

Q. What was the number of your personnel afloat?

A. 629. [537]

Q. What does that include, in the personnel afloat?

A. All of the members of the crew on the ship or ships.

Mr. Bogle: I will now offer that in evidence.

Mr. Ryan: I object to this on the ground that it is not the best evidence; not proper proof of the



(Testimony of Thomas B. Wilson.)

facts alleged therein. I ask Your Honor to examine it. The witness was asked—

The Court: (Interposing) I believe, Mr. Ryan, that no offer has yet been made.

Mr. Ryan: He just offered it.

The Court: Did you?

Mr. Bogle: Yes.

Mr. Ryan: Now, this witness was asked about the personnel of the company. That is a very simple matter, to produce the payroll of this company here at Seattle, and if they want to prove the payroll and list of employees at other ports they can do so. This is apparently some memorandum gotten up by some assistant, and not by this witness, from some document which has not been identified; and this witness is not in the employ of the company any longer. I respectfully ask—I object on the ground that it is not the best evidence and that we should be entitled to at least the records showing who the officers and employees were, and what their duties were.

Mr. Bogle: There are 900 of them. Do you want a thousand names and who they were, Mr. Ryan?

Mr. Ryan: Well, I do not want a memorandum like that.

Mr. Bogle: Well, you said the names and records of [538] the employees.

Mr. Ryan: The payroll of your company will show obviously. You have plenty of those payrolls. They come out every month.

(Testimony of Thomas B. Wilson.)

Mr. Bogle: Well, they won't show.

The Court: The objection to the authentication already made will have to be sustained, and it is at this time.

Mr. Bogle: Well, I will prove it by another witness.

Q. (By Mr. Bogle) What is your best recollection as to the approximate number of employees of your company in May of 1935?

Mr. Ryan: That is objected to on the ground that the question is not in proper form. Ask the witness whether he knows or has knowledge.

The Court: If the question is if he knows, he may answer.

Q. (By Mr. Bogle) You were vice-president and general manager of this company for how long, Mr. Wilson?

A. In excess of four years.

Q. During that time would you have knowledge of the approximate number of employees, both ashore and afloat, at varying periods?

A. Yes, sir.

Mr. Ryan: Now, I object to that.

The Court: All that he can tell us about is if he knew. That would be the answer to the question.

Mr. Bogle: Well, there is never the same number of personnel on any one day. They change, and I don't [539] know that he knows as to a man.

The Court: The objection was made on the ground if he knows. The question was limited to that.

(Testimony of Thomas B. Wilson.)

Mr. Bogle: All right.

Mr. Ryan: I want to add another ground of objection that I think is important.

Mr. Bogle: Well, the Court has sustained your objection.

Mr. Ryan: He has?

The Court: Yes.

Mr. Ryan: All right. I will wait until counsel offers it.

Mr. Bogle: I have already offered it and he has sustained it.

Q. (By Mr. Bogle) From your own personal knowledge, Mr. Wilson, I will ask you if the number of employees of the Alaska Steamship Company varied during the peak seasons of service to which you have referred?

A. Very sharply.

Q. When your vessels are not in commission, during the off season, as you have testified, what personnel is kept aboard those vessels while they are laid up at West Seattle?

A. We keep the licensed deck officers and the licensed engineers. They do not necessarily stay aboard, but they stay in our West Seattle plant. They stay on the payroll.

Q. What happens to the unlicensed crew of a vessel when it is laid up at West Seattle?

A. They are paid off. [540]

Q. Well, I will ask you if in your peak season your operating or off-shore—not operating but your

(Testimony of Thomas B. Wilson.)

off-shore personnel increases, at least to the extent of the unlicensed deck crews over the off-shore personnel when the vessels are laid up?

A. Oh, materially. [541]

Q. Have you a statement there of the employees during the peak of operations in 1935, when all vessels were in commission?

A. I have. (Witness produces document.)

Mr. Ryan: Are you offering that in evidence?

Mr. Bogle: I haven't had it marked yet, Mr. Ryan.

(Compilation from pay roll records marked for identification

Petitioner's Exhibit No. 6.)

Q. The information on Petitioner's Exhibit No. 6 for Identification, Mr. Wilson, was that compiled in substantially the same form and manner as Petitioner's Exhibit No. 5 for Identification?

A. Yes, sir.

Mr. Ryan: I object to the form of the question.

Mr. Bogle: I am getting it so that you can make your objection.

Mr. Ryan: He is trying to ask the witness whether it corresponds to something that is not in evidence, and I object to going outside the record.

Mr. Bogle: I beg your pardon, Mr. Ryan—

Mr. Ryan: (Interposing) There is a very serious objection.

Mr. Bogle: You misunderstood the question.

(Testimony of Thomas B. Wilson.)

The Court: The objection is overruled. You may answer the question.

Q. (By Mr. Bogle) Did you get the question?

A. I answered it. (Question and answer read.)

The Court: Is your objection that it is a leading question?

Mr. Ryan: Why, yes, Your Honor. I objected to the [542] form of the question.

Mr. Bogle: All right; cut it out.

The Court: Strike it.

Q. (By Mr. Bogle) How was Petitioner's Exhibit No. 6 for Identification compiled?

A. Compiled from the records, the pay roll records of the company.

Q. Was it compiled by you?

A. No, sir. It was compiled under my direction, and at my request.

Q. By the various employees having charge of those records?

Mr. Ryan: That is objected to as leading.

Mr. Bogle: Oh, well——

Mr. Ryan: This point is quite important, Mr. Bogle. There is something in that——

Mr. Bogle: You do not have to argue to me; argue to the Court.

The Court: Each counsel will address their objections and statements to the Court, and the Court will rule. I think that question is leading, Mr. Bogle.

(Testimony of Thomas B. Wilson.)

Mr. Bogle: What was the question? (Question read.)

Q. (By Mr. Bogle) Do you know by whom that was compiled?

A. It was compiled by Mr. McKinstrey, to my best knowledge.

Q. Mr. Wilson, what would be your opinion, from your experience as vice-president and general manager of this company, in charge of operations, for a number of years, as to the approximate off-shore personnel of the Alaska Steamship Company when all of its nineteen vessels were in operation?

A. It would average between 1000 and 1200.

[543]

Q. Would there be any material variation in the onshore personnel between the peak and the off season?

A. Yes, sir.

Q. Where would that variation principally come?

A. As already explained, the licensed personnel worked in the West Seattle yard during the off season, and as the ships would go to sea they naturally went with the ships, which reduced the personnel in the shipyard; and as the ships went to sea the activity in the shipyard, of course, was decreased.

The Court: At this point we will take a five-minute recess.

(Recess)



(Testimony of Thomas B. Wilson.)

Mr. Summers: If Your Honor please, Mr. Dennis has requested that until Mr. Pellegrini is present, at least, the Government wishes to join in any objections made on behalf of Claimants by Mr. Ryan.

The Court: Let the record show that the Government does so join. And, for that matter, I assume that all Claimants are being spoken for by Mr. Ryan?

Mr. Ryan: That is true, Your Honor.

The Court: Let the record so show.

Mr. Bogle: That is quite all right.

Q. (By Mr. Bogle) You testified that you resigned, I think in August, 1937?

A. Yes, sir. I resigned from active duty.

Q. To get the record clear, have you any official title with the company at the present time?

A. I am still a vice-president of the corporation.

Q. Have you any active duties? [544]

A. No; on leave, inactive duty.

Q. When you joined the company in June, 1933, was the West Seattle yard in operation?

A. Yes, sir.

Q. Was it in operation in May, 1935?

A. Yes, sir.

Q. What does that yard consist of, Mr. Wilson?

A. The usual shipyard where vessels are repaired and maintained. That yard is designed to accommodate all types of work except under-water work and drydocking.

(Testimony of Thomas B. Wilson.)

Q. Is it owned by the Alaska Steamship Company?

A. Yes.

Q. And operated by that company?

A. Yes.

Q. And I think you said you used it for tying up vessels in the off season?

A. Correct.

Q. In May, 1935, where was the major portion of the maintenance work and repairs to the fleet of the Alaska Steamship Company done?

A. In the West Seattle ship yard.

Q. You testified that during the peak season that all nineteen of your vessels are in operation?

A. Yes, sir.

Q. Approximately what number, as an average, are in operation?

A. Yes, sir.

Q. Approximately what number, as an average, are in operation during the off season?

A. About five; four or five. [545]

Q. And what becomes of the licensed personnel of the fourteen vessels laid up during the off season—approximately fourteen?

A. They are placed on what is known as short pay roll and given employment in the West Seattle ship yard. That is, all except some of the younger juniors, who have perhaps been employed only that season. They are paid off.

Q. What happens to your masters?



(Testimony of Thomas B. Wilson.)

A. The masters are classified—passenger ship masters are placed on the short pay roll, and are not called upon for any duty in the West Seattle ship yard. But others report there for various duties that we assign them.

Q. In handling your men in this way, Mr. Wilson, is it the purpose to try to keep your operating personnel intact for the peak seasons?

A. Exactly.

Q. In operating a company of this kind, with the number of employees that you have, and the service the company is engaged in, in May, 1935, in what manner did the executive department divide the various duties and delegate them to different parties?

Mr. Ryan: Objected to on the ground that if that was in writing the writing should be produced, or if it is in the form of records the records should be produced.

Q. Is there any writing as to how you organized your business?

A. No, sir.

Q. That was under your supervision, the organization, wasn't it? [546]

A. Entirely.

Q. How was the business of this company organized?

A. I organized it into what I would term natural departments.

The Court: Natural departments?

(Testimony of Thomas B. Wilson.)

The Witness: Yes, sir. As distinguished by the various activities in the company.

Q. Will you just state briefly what the different departments were, who the department heads were, and what their respective duties were?

A. First, the maintenance and repair department, headed by E. M. Murphy, superintendent of maintenance and repairs.

Q. His duties and those of the department were in charge of the physical ships and other property, to maintain the ships and property, repair the ships, keep them seaworthy and ready to operate.

Mr. Bogle: At this point I will ask to have this document marked for identification.

Mr. Ryan: Is this for identification?

Mr. Bogle: That is all. I haven't asked him any questions about it yet.

(Circular letter marked for identification  
Petitioner's Exhibit No. 7.)

Q. Mr. Wilson, referring to Petitioner's Exhibit No. 7 for Identification, will you state to the Court what that is.

A. This is a letter written by me to department heads and masters of vessels, outlining the appointment of E. M. Murphy as superintendent of maintenance, and stipulating his duties and authorities in the operation of the company.

Q. Was that circular letter No. 1 in effect during the month [547] of May, 1935?

A. It was.

(Testimony of Thomas B. Wilson.)

Mr. Bogle: I offer that in evidence, if Your Honor please.

Mr. Ryan: That is a copy, isn't it? Where is the original?

Mr. Bogle: It is a circular, a mimeographed letter, that was sent, he said, to all the masters and heads of departments.

Mr. Ryan: Was it ever signed by you?

The Witness: This represents the original.

Mr. Ryan: Was there a letter ever signed by you in that form?

The Court: Of which this is merely a copy?

Mr. Ryan: Yes.

The Witness: I cannot say that it was actually signed in my handwriting, but it was my dictation, my preparation, and when it was issued it was issued in several hundred copies and distributed to all those people addressed. But each copy mailed to each person was not personally signed by me, which is not customary with circular letters.

The Court: And in the form it now is it was treated as an original by you in the conduct of your business for your company?

The Witness: Correct.

Mr. Ryan: Was this one of a series of letters outlining the duties of employees?

Mr. Bogle: I object to that. We are dealing with one circular now. [548]

Mr. Ryan: No; I do not think we are. This is apparently some odd kind of a document, and if it is

(Testimony of Thomas B. Wilson.)

part of a debt I want to object to it on the ground that it is not complete.

Mr. Bogle: It is not part of an odd set at all.

The Court: The objection to the question put by counsel is overruled. The witness may answer counsel's question.

The Witness: May I have the question? (Question by Mr. Ryan read as follows:)

“Was this one of a series of letters outlining the duties of employees?”

The Witness: No.

Mr. Ryan: Were there any other letters of approximately that type, sent to the other department heads?

Mr. Bogle: I shall object to that, if Your Honor please.

Mr. Ryan: At about that time?

Mr. Bogle: If it is proper at all it is proper cross-examination. I simply asked him to identify it.

The Court: Yes; that objection is sustained. The first answer covers that phase of it. More particularly, as I understand it, counsel desires to know whether or not the effect of this letter was dependent upon some other letter or communication which in any way conditioned this letter, or made this letter conditional in any way, or affected it.

The Witness: No. May I answer?

The Court: Yes; you may answer.

(Testimony of Thomas B. Wilson.)

The Witness: I know of no condition, as recited. [549] It is simply explained by the fact that back in 1934 there were some adjustments made in the duties of this individual and this department, which called, in my opinion, for the issuance of such a circular letter. Those were not involved in any of the other departments, hence this was not one of a series, as you asked me.

Mr. Ryan: Did you appoint Murphy, originally, to this particular—

Mr. Bogle: (Interposing) I submit, if Your Honor please.

The Court: Objection overruled. The offer is made and the Court is about to rule thereon.

Mr. Ryan: Yes, Your Honor.

The Court: Petitioner's Exhibit No. 7 is now admitted.

(Circular letter received in evidence Petitioner's Exhibit No. 7.)

Q. (By Mr. Bogle) Mr. Wilson, were any subsequent letters or circular letters issued enlarging upon the duties of the head of the maintenance and repair department?

A. No, sir. To my best belief that instruction is exactly as is today.

Q. It was up to the time you left?

A. Yes, sir.

Q. Do you know, Mr. Wilson, the approximate number of regular employees in the maintenance and repair department, in the office force?

(Testimony of Thomas B. Wilson.)

A. The office force consisted, as I remember, of about six to eight, in the office. In the various other outside work, like in the shops, that varied, of course. It [550] varied from day to day according to the work in hand. That ran from about a minimum of 100 up to as many as four to five hundred.

Q. You are now speaking of the West Seattle shop?

A. Yes, sir; in this department.

Q. That came under the jurisdiction of the maintenance and repair department, did it?

A. Yes, sir.

Q. What were the other departments?

A. I have outlined the maintenance and repair department now. I will take up next the traffic department, headed by L. W. Baker, Traffic Manager. His duties were wholly confined to maintaining contact relations with shippers, and securing business, both passenger and freight—gross business.

Q. Did the traffic department have any authority over, or did it have any duties in any wise connected with the operation of the maintenance and repair of ships?

A. No, sir.

Q. What other department?

A. Next we had the accounting and treasury department, headed by Mr. W. T. Ford, Auditor. They took care of the accounting of the operation and disbursing the money.

Q. Did it have any connection with operations, such as the repair or maintenance of ships?



(Testimony of Thomas B. Wilson.)

A. Nothing whatever, except the accounting.

Q. They paid the bills?

A. Yes, sir; and kept the records.

Q. What other departments, Mr. Wilson?

A. We had the purchasing and steward's department. [551]

Q. Briefly, what were the duties of that department?

A. The purchasing department was headed by Mr. W. D. Sprague, Purchasing Agent. His assistant, C. O. Nelson, was Assistant Purchasing Agent and Port Steward. Those two activities were interwoven together in that department. They did the purchasing of material and supplies for the company, which is quite an item in founding the ships, that is, keeping them supplied with food and necessary equipment.

Q. When you refer to necessary equipment, what equipment came under the steward's department, the port steward?

A. All equipment under what we term hotel equipment.

Q. Would you say that would be limited to the rooms and the kitchen and the dining service?

A. Correct.

Q. Any duties in connection with the repair and maintenance and operation?

A. Their only duty in that connection was in the purchasing and securing of materials as Mr. Murphy, the superintendent of maintenance, might

(Testimony of Thomas B. Wilson.)

request. They naturally kept in touch with the best sources of supply, the prices and acted merely as a purchasing agent insofar as Mr. Murphy's department was concerned.

Q. What other departments did you have?

A. We had the transportation department, headed by Mr. F. B. Tracy.

Q. What was his title?

A. General agent.

Q. Is Mr. Tracy now alive?

A. No; he is dead. [552]

Q. He died subsequent to May, 1935?

A. Yes, sir; in the spring of 1937.

Q. What were the duties, generally speaking, of that department?

A. He had charge of the deck personnel on the steamers, insofar as maintaining them and selecting them and appointing them on the job, he had charge of the loading and unloading of ships in Seattle, the Puget Sound area, and he also had charge over the agents in Alaska, insofar as loading or unloading of freight was concerned.

Q. He was in charge of the stevedoring?

A. Yes, sir.

Q. In these figures that we have mentioned this morning, referring to employees, you have not included any stevedores, checkers, or men employed on the dock in loading or discharging cargo, have you?

(Testimony of Thomas B. Wilson.)

A. In those figures I have quoted all the cargo handling employees have been eliminated. They would possibly boost the figure up to 2,000 employees during the peak season.

Q. Then you had an executive department?

A. Yes, sir.

Q. What was the personnel of the executive department in May, 1935?

A. Myself, as vice-president and general manager; Mr. M. McKinstrey, assistant to the vice-president and general manager; a secretary and a clerk. That last is two individuals, a secretary and a clerk.

Q. What supervision, if any, did the executive department have over the other departments? [553]

A. The heads of these other departments reported directly to me, and were responsible to me for the activities of their special departments. They rendered various types of reports to me, extending from daily to weekly and monthly reports, and they were accountable to me for the results accomplished in their departments.

Q. In May, 1935, just what was the physical detail of the employment of crews; who had supervision over which departments aboard the ships, as to the selection of the crew?

A. That was divided between departments. Mr. Murphy, of the maintenance and repair department, which had charge of the mechanical and physical part of the ship, naturally handled the engine department on board, and the radio crews.

(Testimony of Thomas B. Wilson.)

Q. You refer to the engine department; did that include the licensed as well as the unlicensed personnel in the engine room?

A. It did.

Q. That was under Mr. Murphy's jurisdiction?

A. Entirely.

Q. How were your deck officers employed?

A. They were employed by Mr. Tracy, the general agent of the transportation department. He selected the licensed officers for the deck department, recommended the captains to me, whose appointment hinged on my approval.

Q. And the steward's department?

A. That was handled by the port steward, Mr. C. O. Nelson. I did not require any advance approval of any of his appointments. He appointed the chief steward and the [554] assistant chief steward, and secured the personnel from the Union Hall, either directly himself or through his chief steward of the ship.

Q. How was the ship's equipment handled? First, I think you said, the steward's and so-called hotel equipment was handled through the port steward?

A. Correct.

Q. How was the deck equipment handled?

A. The deck equipment, as well as the engine department equipment, was all handled under the jurisdiction of Mr. E. M. Murphy. That is explained, as I have previously stated, because he

(Testimony of Thomas B. Wilson.)

was in charge of the maintenance of the physical part of the ship.

Q. Under your organization at Pier 2—probably I should say at the Alaska Steamship Company—what was your method of deciding whether or not to break out and put in commission a vessel laid up at the West Seattle yards?

A. Well, any ship that was not included in the liner class, on a printed, regular advance schedule, would come under the category of an irregular ship for irregular service, and that came about by the traffic manager being the originator. Naturally, it followed that in his contacts with shippers he would develop a given amount of freight, or tonnage, as we call it, to move at an approximate date to certain ports, and when that developed to a stage where he felt it was time to program the sailing of an irregular ship to irregular ports he took that up with me, either verbally, or in some cases in writing. After going into the facts and figures with him, and assuming that I approved it, then we proceeded with the [555] necessary machinery to break out one of these ships from the West Seattle yard and schedule her for a voyage. [556]

Q. That is one thing that I want to get at, what was the necessary machinery to break out one of these laid up ships?

A. Well, after the decision of the traffic manager, which was either reached in writing or verbally, either I myself or my assistant took up the

(Testimony of Thomas B. Wilson.)

question with Mr. Murphy, superintendent of maintenance, to develop with him if the ship recommended by the traffic manager was ready, seaworthy and available to go to sea. If so, my office then issued a letter of instructions to all of the departments concerned, advising them that such and such a ship would break out of the West Seattle yard on such and such a date, and would be placed on berth for loading and sailing to such and such points or ports. Does that answer your question?

Q. I think that that does, Mr. Wilson. Now, were you personally in Seattle on May 13th or May 16th, 1935?

A. No, sir.

Q. Were you in Seattle on May 1st, 1935?

A. No, sir.

Q. Where were you, Mr. Wilson?

A. In Alaska.

Q. And in your absence who was in charge of the executive department?

A. Mr. M. McKinstry was in charge—my assistant.

Q. Going back a little, Mr. Wilson, under your method of operating this fleet, when were the vessels put through annual U. S. Steamboat Inspection?

A. Beginning January 1st of the new year, up until spring started, or until the ships were needed, it was our [557] program and our policy, which we carried out, of getting the inspections all com-



(Testimony of Thomas B. Wilson.)

pleted and having the ships all repaired, and new certificates ready for duty for the opening of spring.

Q. Do you know, Mr. Wilson, whether or not the Steamship "Denali" had undergone U. S. Steamboat Inspection and was issued a new certificate prior to your departure for Alaska?

A. She had.

Mr. Bogle: I will have this marked for identification.

(Document marked for identification Petitioner's Exhibit No. 8.)

Q. (By Mr. Bogle) In your organization what department had the direct responsibility and duty of putting the vessel through U. S. Steamboat Inspection?

A. Mr. Murphy of the maintenance department.

Q. I hand you Petitioner's Exhibit for identification No. 8, which is a certified copy of the U. S. Steamboat Inspection certificate, Steamship "Denali". Do you recognize that as being such?

A. I do.

Q. This certificate is dated—

A. (Interrupting) January 31st.

The Court: What year?

Mr. Bogle: 1935.

The Witness: 1935.

Mr. Ryan: No objection, subject, of course, to correction on comparison if we find any.

Mr. Bogle: Well, I called your attention to the [558] fact that this is a certified copy, certified by the Steamboat Inspection Bureau.

The Court: Petitioner's Exhibit 8 is admitted.  
(Certified copy of U. S. Steamboat Inspection Certificate, Steamship "Denali", received in evidence as Petitioner's Exhibit No. 8.)

Q. (By Mr. Bogle) Mr. Wilson, were you in Alaska at the time the "Denali" stranded?

A. I was.

Q. On May 19th?

A. I was. I was on an inspection trip.

Q. Did you have any knowledge of any unseaworthiness, or any defective equipment, or any act of negligence which contributed to the stranding of the "Denali"?

A. No, sir.

Q. Was Mr. Murphy in the employ of the company at the time you joined the company, in June, 1933?

A. Yes, sir. He had been there a number of years.

Q. From your association and experience with Mr. Murphy, and supervision to some extent over his work, what would you have to say as to his competency?

A. Excellent.

Mr. Ryan: That is objected to on the ground that the witness has not yet been qualified to pass upon the competency of a man operating or in charge of duties or operation of maintenance. He

(Testimony of Thomas B. Wilson.)

testified that he had the job, but he has not yet been shown to have the qualifications to pass upon his competency.

Mr. Bogle: I am not trying to prove that. I have got to prove by this witness, to the best of his [559] knowledge and belief, that this man was competent because these duties were delegated to him. Now, if they can prove that he was incompetent, then they must bring it back to us.

Mr. Ryan: I object to a man blandly saying that, "I am competent to pass upon that matter". He has got to show, first, that he has had enough experience of his own of the type of this man's duties to pass upon the man's competency. That is a well settled rule of evidence.

The Court: The objection to the question is overruled, and you may inquire further on the subject, if you wish, and the subject may be gone into more fully, if counsel objects, and desires to do so, on cross examination.

Q. (By Mr. Bogle) Mr. Wilson, did you answer the question?

A. Yes, sir.

Mr. Bogle: What was the answer?

(Answer read as follows: "Excellent".)

Q. (By Mr. Bogle) Was Mr. Tracy with the company when you became associated with it?

A. Yes, sir.

Q. Did——

A. (Interposing) He was an old employee.

(Testimony of Thomas B. Wilson.)

Q. Was he occupying the position of general agent at the time that you joined the company?

A. No, sir.

Q. Did you appoint him to that position?

A. I did.

Q. When was that appointment made? Have you that letter of [560] appointment?

A. It was made in October, 1933.

Mr. Bogle: I will have that marked for identification.

(Document marked for identification Petitioner's Exhibit No. 9.)

Mr. Ryan: May I ask the Court this: It is not necessary, is it, to take exceptions to the rulings of the Court? I mean, it is understood that they are to be taken without so stating?

The Court: Mr. Ryan, on the contrary, I understand the rule, particularly in this Circuit, to be that the Court cannot even voluntarily supply the exception. The law and the practice here requires that counsel, in order to preserve an objection, must note an exception and it must be acted upon by the Court.

Mr. Ryan: Is that the rule in Admiralty?

The Court: That is the ruling of this Circuit relating to the practice in the Admiralty Court.

Mr. Ryan: That has not been the practice in other jurisdictions, and in view of that, may I have an exception in Your Honor's courtesy to your last ruling that this witness can pass upon the compet-

(Testimony of Thomas B. Wilson.)

eny of somebody without having it shown that this witness is qualified by previous training and experience to pass upon that competency?

The Court: The exception is noted and allowed. It may be that all counsel can effectively have an understanding about that. I am not prepared to say as to that at this time. [561]

Mr. Bogle: I am prepared to so stipulate.

Mr. Ryan: And I ask that an exception be stipulated by counsel to each and every adverse ruling of the Court so that the trial can be expedited and so that it won't be necessary to continually take exceptions, unless the Court feels that for its own desires——

Mr. Bogle: (Interposing) I will so stipulate.

The Court: The Court approves of the stipulation, and it is so ordered, that it may be understood that when counsel makes an objection, and the Court rules adversely to the objection, an exception is noted by the objecting counsel and the Court allows an exception.

Q. (By Mr. Bogle) Referring to Petitioner's Exhibit 9 for identification, I will ask you if to your knowledge that is a copy of a letter which you wrote to Mr. Tracy as of the date thereon shown, October——

A. (Interposing) October 28.

Q. October 28, 1933?

A. Yes, sir.

(Testimony of Thomas B. Wilson.)

Q. And from the date of this letter did he continue in the capacity as general agent with respect to the duties outlined in this letter up to the time of his death?

A. He did.

Q. Which was subsequent to May 16, 1935?

A. It was.

Mr. Dennis: Lest there be any misunderstanding, may it please the Court, may we have that same stipulation with reference to exceptions, and that if Mr. Ryan makes an objection and it is adversely ruled [562] upon, may it be understood that an objection is noted on behalf of the government also?

The Court: It will be noted on behalf of the Government also, and the Court further understands that unless the contrary is made to appear on a particular occasion, any objection that Mr. Ryan makes speaking for one or more of the claimants, he is speaking at all times for and on behalf of all the claimants.

Mr. Ryan: Is that satisfactory to you, Mr. Bogle?

Mr. Bogle: Yes. I stipulate to that, Mr. Ryan.

Mr. Ryan: Was not there an original of that letter signed by you, Mr. Wilson?

The Witness: Yes.

Mr. Ryan: I object to the copy on the ground that it is not the best evidence.



(Testimony of Thomas B. Wilson.)

The Court: In this particular case it was directed to the person named?

Mr. Bogle: Yes, and the original is obviously in the hands of the person who is now dead. I asked the witness if he knew of his own knowledge whether that was a carbon copy of the letter which he actually sent on that date.

The Witness: That is the official office copy of my file.

The Court: And the man to whom it was addressed is now deceased?

The Witness: Yes, sir.

Questions by Mr. Ryan:

Q. The man to whom it was addressed was an employee or a subordinate under you in your office, wasn't he? [563]

A. In the company; not in my office.

Q. Yes, but in your company's office here in Seattle of which you were in charge, isn't that right?

A. That is right.

Q. So this document is an inter-office memorandum of your own office, taking your office to be the whole office here in Seattle, isn't that right?

A. If you want to include the departmental offices as part of my office, that is correct.

Q. Have you made a search of the files of that department of which he was the head to find the original of that letter?

(Testimony of Thomas B. Wilson.)

A. No, I personally have not. I assumed that it was kept by the man as his personal letter of appointment.

Q. Have you ever compared that copy with the original yourself?

A. I did, yes, at the time of signing.

Q. You compare carbon copies with the originals at the time that you send them out, is that right?

A. Yes, sir. I read them.

Q. You always do?

A. Yes, sir.

Q. You read the carbons in comparison with the originals?

A. I read the original in detail and then I compare the carbon with it to see if it is an exact copy.

Q. You always do that?

A. In my own way I do.

Mr. Ryan: No objection.

The Court: The objection is overruled. Exception allowed. Petitioner's 9 is now admitted. [564]

(Copy of letter of appointment of Mr. Tracy as the General Agent, October 28, 1933, received in evidence as

Petitioner's Exhibit No. 9.)

Q. (By Mr. Bogle) Mr. Wilson, were you personally acquainted with Captain Obert?

A. Yes.

Q. Do you know approximately how long he

(Testimony of Thomas B. Wilson.)

had been employed in the service of the Alaska Steamship Company?

A. I do not remember accurately, but it has been—he has had a long record of service with the company.

Q. Do you know Captain Healy?

A. I do.

Q. Do you know of your own knowledge whether he has been associated with the company since you joined it—at least that long?

A. Yes. He has been with it ever since I joined the company, and I think that he started on the deck as a sailor and has put in his whole career there with this company.

Q. Do you in the Alaska Steamship Company have a list of regular licensed employees available for service on various ships of the line?

A. We do.

Q. Were both Captain Healy and Captain Obert on that list?

A. They were.

Q. As employees?

A. They were.

Q. Had they been approved by you?

A. Yes, sir.

Q. And to the best of your knowledge and belief were they [565] competent ship masters?

Mr. Ryan: I object to that—

A. (Interposing) Yes.

(Testimony of Thomas B. Wilson.)

Mr. Ryan: (Continuing) On the ground that the witness is not qualified to give an opinion on that matter.

Mr. Bogle: Well, he is the general manager, and I am asking him to the best of his knowledge and belief.

The Court: That objection is overruled and exception allowed. The answer was "Yes" as I understood it.

The Witness: Correct.

The Court: It may stand.

Q. (By Mr. Bogle) I don't know whether I asked you, Mr. Wilson—Mr. Tracy, the nature of his work required him to be in Seattle at all times?

A. Correct.

Q. In other words, was his work on the dock?

A. It was.

Q. From your experience as general manager of this company, from June 1, 1933, up until May of 1935, what would you say as to Mr. Tracy's competency for the position that he held?

Mr. Ryan: That is objected to on the same grounds.

The Court: If you know what it was.

A. It was good.

Mr. Ryan: That is objected to on the same grounds.

The Court: Objection overruled and exception allowed.

(Testimony of Thomas B. Wilson.)

Q. (By Mr. Bogle) Did you look into his record before you [566] made this appointment on October 28th?

A. Very carefully.

Mr. Bogle: I think that is all, if the Court please.

The Court: You may cross examine.

Mr. Bogle: It is five minutes to twelve, Your Honor. I wonder if we could take a recess at this time instead of at 12:00 o'clock?

The Court: It being the commencement of the case I will accede to counsel's request. We will take our noon recess until two o'clock.

(Whereupon an adjournment was taken at 11:55 o'clock A.M., October 19, 1937, to 2:00 o'clock P.M., October 19, 1937.) [567]

October 19, 1937.

2:00 o'clock P. M.

The Court: I have received from the Clerk after the same was filed, the Petitioner's trial memorandum, and have been from time to time considering it. Has opposing counsel received a copy of it?

Mr. Ryan: No, your Honor.

The Court: It is directed that all papers filed in the case be served upon opposing counsel.

Mr. Long: It will be served this afternoon, Your Honor. I expected to serve it before now.

The Court: Where it is convenient, in a case like this, serving personally, the service should be

(Testimony of Thomas B. Wilson.)

made before filing, unless that is contrary in a specific situation to the rules of the court, or not in keeping with the requirements of law. The Court would welcome a similar trial memorandum from opposing counsel. You may proceed.

### THOMAS B. WILSON

resumes the witness stand for further

#### Direct Examination

Mr. Bogle: If Your Honor please, I would like to ask one or two additional questions on direct examination.

The Court: You may ask additional questions on direct examination of this witness.

#### Further Direct Examination

By Mr. Bogle:

Q. Mr. Wilson, I overlooked asking you what your experience [568] has been, briefly stated, to joining the Alaska Steamship Company in 1933.

A. I started with the Southern Pacific Railroad Company and spent some 22 years with them and their interests. I started as a clerk and telegraph operator, and my last service with them was supervisor of all transportation on the Pacific Coast System. Next I was Vice-President and General Manager of the Southern Pacific Motor Transport Company, a wholly owned subsidiary of the Southern Pacific Railroad, which I organized and managed.



(Testimony of Thomas B. Wilson.)

Following that it was merged in with a number of other companies, into the Pacific Greyhound Bus Lines, of which I became President, in charge of its management and operation over some five states in the West. Following this I became Vice-President and General Manager of the Alaska Steamship Company.

I neglected to say that in amongst those 20 odd years with the Southern Pacific, that at that time the Pacific Mail Steamship Company and the Southern Pacific belonged to the same family, and during this period I spent some three years with the Pacific Mail Steamship Company.

Q. Was that on shore or off shore?

A. Both. I operated on their ships to the Panama Canal, which was under construction in those days, and out to Hong Kong, in the Orient.

Q. In what department, Mr. Wilson?

A. In various capacities, ending as purser, assistant purser and freight clerk.

Mr. Summers: Pardon me, Mr. Wilson; I regret to [569] to interrupt you, but it is very difficult for me to hear you.

The Court: Speak up clearly.

Mr. Bogle: Do you want him to repeat that answer, Mr. Summers?

Mr. Summers: No; I think not.

The Court: If you would like to have the reporter read the answer it will be done.

Mr. Summers: No; I think that will be satisfactory, but it is a little difficult to hear.

(Testimony of Thomas B. Wilson.)

The Witness: Then in other positions, on the dock terminal in San Francisco, and in their offices, and when the separation of those two companies occurred, I went with the parent organization, the railroad.

Q. How often, Mr. Wilson, did you visit the West Seattle yards?

A. When I was in Seattle I think I can say that I averaged at least two visits a week there.

Q. What was the purpose of those visits; what did you do?

A. To inspect the yard, and jointly with Mr. Murphy to go aboard the ships and examine the progress of the work, and discuss other work that we were contemplating, and inspecting the jobs under way.

Q. To what extent and in what matters did Mr. Murphy report to you?

A. Only in matters of major expenditure that was outside of what was termed ordinary maintenance. Any matter of betterment to a ship that would mean some new addition that it hadn't had before, that would be taken up with me, and we would discuss and agree upon it. Or any major item, extraordinary circumstances. But the [570] ordinary maintenance, the ordinary care and repair in maintaining the proper equipment on the ship, keeping the ship seaworthy, handling its inspections and surveys, that was wholly within his jurisdiction and responsibility. He handled that without

(Testimony of Thomas B. Wilson.)

reference to me.

Q. If in the nature of that work any extraordinary expenditure was necessary, would he report that to you?

A. Yes. If some extraordinary expenditure was looming up, then he would come and discuss it with me.

Q. Before you left for Alaska in April, 1935, had he reported to you any extraordinary repair necessary to the "Denali"?

A. No.

Q. Had he made any report to you with reference to any defective or unseaworthy condition of that vessel?

A. No.

Mr. Bogle: I do not believe, Your Honor, that I offered this Petitioner's Exhibit No. 6 in evidence. I assume that it would be subject to the same objection as Your Honor sustained to Petitioner's Exhibit No. 5 for Identification, but I wanted to make the offer for the record.

The Court: It is a summary taken from the corporate records, which are not before the Court at this time?

Mr. Bogle: That is right.

The Court: And as to which no opportunity has been given to cross-examine, the Claimants have had no opportunity to cross-examine.

Mr. Ryan: It is objected to, Your Honor.

(Testimony of Thomas B. Wilson.)

Mr. Bogle: I think Your Honor sustained the objection [571] on the ground that the exact figures were not within the personal knowledge of this witness.

The Court: I sustained the objection as made at that time, whatever it was.

Mr. Bogle: I wanted to make the offer, and I expect to prove it by another witness. That is all.

The Court: The Court is now considering the offer.

Mr. Ryan: I object to it on the same grounds that I objected to the similar exhibit, Petitioner's Exhibit No. 4 for Identification—

The Court: It was No. 5.

Mr. Ryan: And particularly I want to add another objection, in that this is not merely a summary, or something of that sort, but involves allegations or inferences. For instance, if Your Honor will glance at the first line of that you will see that it does not even correspond to the testimony of this witness. This witness says that the executive department was his department, that he was in charge of all departments. This witness did not make this summary himself, and it is not a fit document for him to even refresh his recollection from, because it is not a document made contemporaneously, or anything. It is some little thing made here since this litigation arose, by somebody else, and not by this witness, and certainly in no sense refresh the recollection of this witness.

(Testimony of Thomas B. Wilson.)

**The Court:** The objection as applied to the authentication previously made is sustained.

**Mr. Bogle:** I might in connection with that, Your Honor, ask him another question. [572]

**The Court:** You are at liberty to do so.

**Q.** (By Mr. Bogle) Referring to that exhibit for identification, I will ask you if you have any personal recollection as to the average peak number of employees, both on shore and off shore, of the Alaska Steamship Company, while you were vice-president and general manager?

**A.** Absolutely.

**Q.** What is your recollection as to the average number of employees on shore and off shore during the peak? And by the peak I mean when all the vessels were in service.

**Mr. Ryan:** If the Court please, I object to that. That is a matter that obviously could easily be proved by original records of the company. This witness was handed this document, which has been excluded by counsel, and the witness is using it to refresh his recollection. It is not a document that was ever made by this witness, and it is not shown to be correctly taken from the books. It was not taken from the books by this witness, and the classification is wrong so far as the direct testimony of this witness is concerned.

**Mr. Bogle:** I do not agree with you.

**Mr. Ryan:** He is being asked for his recollection when the matter is something that can be easily proved, and we would like to see the records in

(Testimony of Thomas B. Wilson.)

connection with the personnel of this company, and we have demanded them in our notice to produce. I press the objection very seriously that this kind of secondary and improper evidence should not be received, when the Petitioner has not complied with our notice.

Mr. Bogle: Well, that is not quite a correct or [573] proper statement. They have waived the notice temporarily, and it has not yet been heard by the Court. The inference in that statement is very improper. I will ask the witness now, if Your Honor please, as vice-president and general manager, if the record of the personnel, ashore and afloat, came within his notice, and if so, whether he has any independent recollection of the approximate number of employees at the peak of the season.

The Court: Without any reference to a document at all?

Mr. Bogle: Without any reference to any document.

The Court: Can you answer it without refreshing your recollection by any document?

The Witness: I can.

The Court: The objection is overruled. If the answer is confined to independent recollection and not dependent upon refreshing your recollection from any record.

Q. (By Mr. Bogle) What is your independent recollection as to that, Mr. Wilson?



(Testimony of Thomas B. Wilson.)

A. At the peak season, with all the ships running, the personnel off shore, or afloat, would run between 1000 to 1200.

Q. Is that exclusive of longshoremen and checkers handling cargo?

A. That is exclusive of dock workers, cargo handlers.

Q. While you were vice-president and general manager, all the figures in regard to these matters would be within your knowledge, wouldn't they?

[574]

A. Correct. I used to have reports daily on the organization, how many were working, and that was also checked weekly as well as monthly. It was a part of my responsibility.

Q. What is your recollection as to the average number of the onshore personnel, exclusive of the longshoremen and checkers?

A. It would run from around 150 in the low season of the year up to a maximum of four to five hundred in the busy season.

Q. And as to the number of longshoremen employed, the average number during the peak season?

A. That would run four or five hundred.

Mr. Bogle: That is all. [575]

#### Cross-Examination

By Mr. Ryan:

Q. When you reorganized this Alaska Steamship Company's head office here at Seattle—

(Testimony of Thomas B. Wilson.)

The Court: (Interposing) Will you repeat that question for the benefit of the record?

Q. (By Mr. Ryan) When you reorganized this Alaska Steamship Company's head office here at Seattle did you make any provision for an inspection of the vessels insofar as their compasses were concerned to ascertain whether or not those vessels were fit or seaworthy to be ordered to sea after having laid in this laid-up fleet for several months alongside of the dock?

Mr. Bogle: I object to that as not being proper cross-examination.

The Court: The Court at the moment does not recall what questions or inquiry was made on direct which makes this proper cross.

Mr. Ryan: He said that he reorganized the company and separated all the business into departments and did everything necessary to make them seaworthy; appointed these men, and all that sort of thing. I am trying to show that he didn't make any of these provisions here, one of the most important in connection with the company's business.

Mr. Bogle: I do not remember any such testimony.

Mr. Ryan: I took it down, Mr. Bogle. He has testified on direct that he reorganized this company after he was appointed vice-president and general manager, and divided it into departments; appointed [576] different people; specified their duties and told them what they were to do, and that

(Testimony of Thomas B. Wilson.)

sort of thing. That certainly opens it wide open.

The Court: The objection is overruled. He may answer this, if he did anything with respect to compasses.

A. In the first place I didn't reorganize the company in the interpretation that you put on it. In the second place I made myself no special arrangement for inspection of compasses. That was something that was already covered and handled by the superintendent of maintenance.

Q. Is there anything in writing showing that it was all handled by the superintendent of maintenance?

A. Nothing prior to that statement of my assigning him to that position, which you have already read. That fully covers all questions of maintenance and equipment.

Q. May I see that exhibit? I show you this exhibit—is this the exhibit that you are referring to?

A. It is.

Q. Will you show me anything in that exhibit that refers to compasses?

The Court: Identify the exhibit for the record.

Mr. Ryan: This is Petitoiner's Exhibit 7.

The Court: You are referring to Petitioner's Exhibit 7?

Mr. Ryan: Yes.

A. Item No. 2 that reads, he is responsible and will exercise the supervision of repairs and main-

(Testimony of Thomas B. Wilson.)

tenance and improvements to ships. That covers everything.

Q. You think that that covers compasses? [577]

A. Certainly.

Q. Although you didn't say anything about compasses in it, did you?

A. You don't say anything about the spokes or the steering wheel, either.

Q. Now, you say that he is in charge of the maintenance and repair of the ships.

A. That is right.

Q. And then on your direct examination you testified that you were in charge of the maintenance and repair and operation of the ships.

(Witness does not answer)

Q. Who was the operating manager of this company?

A. I was the general manager.

Q. Who was the operating manager of this company in May, 1935?

A. I say that I was the general manager, and I have testified that the maintenance, repairs, and all the duties that were outlined are in the department of maintenance; the transportation department handled some other phases of the operation. I can only answer you by pointing out the division of the work.

Q. Whose duty was it to ascertain that the compasses were in good condition on one of these ships

(Testimony of Thomas B. Wilson.)

before it was ordered or sent to sea after being taken out of the laid-up fleet in May, 1935?

A. That came under Mr. E. M. Murphy, superintendent of maintenance.

Q. And you have nothing to confirm your inference about that except this Petitioner's Exhibit 7?

[578]

Mr. Bogle: I object to that. That is not an inference. He testified that that delegated the duty.

The Court: Objection overruled. He can answer the question.

Q. (By Mr. Ryan) Answer the question.

A. From our standpoint.

Q. Please answer the question.

Mr. Bogle: Read it, please.

(Question read)

A. I don't understand what you mean by "inference".

Q. (By Mr. Ryan) Is there anything in writing which would tend to show in your opinion that Mr. Murphy was to examine these compasses and ascertain whether they were in good condition?

A. No.

Q. Before the ship was sent to sea?

A. No.

Q. There is nothing else?

A. No.

Q. Did you ever orally tell him that?

A. What, to inspect compasses?

(Testimony of Thomas B. Wilson.)

Q. Yes, sir, to ascertain whether they were in good condition before the ship sailed after being taken out from the laid-up fleet after laying there several months.

A. I don't recall that I mentioned that any more than dozens of other phases that are equally as important.

Q. Now, Mr. Murphy's office was in your office there in the home office here in Seattle, wasn't it?

A. He had an office at the West Seattle Ship Yard as well [579] as one on Pier 2.

Q. And you were in charge of that office yourself, weren't you?

A. In a secondary way.

Q. Yes.

A. It was his office, and he was the one——

Q. (Interrupting) He was subordinate to you in your office here in Seattle, isn't that true?

A. That is right.

Q. You did not delegate, or the company did not delegate to any third person the duty of ascertaining whether these compasses were in good condition, did it?

A. I don't recall that we did.

Q. Well, what makes you think that Mr. Murphy was competent to ascertain whether the compasses were in good condition before the ship sailed?

A. Well, to my mind he was more than eminently qualified.



(Testimony of Thomas B. Wilson.)

Q. Had he ever had a license as a deck officer in his life as far as you know?

A. Not to my knowledge.

Q. Had he ever served at sea in the deck department of a vessel?

A. I cannot speak as to his services at sea. I think that he had some.

Q. I thought you testified on direct that you knew that he was competent.

A. I do.

Q. Now you testify that you do not even know whether he served at sea in the deck department at all.

A. I do, but I do not think that that question is the whole [580] measure of the thing.

Q. But the fact is that you do not right now know whether Mr. Murphy served on the deck department of a vessel in his life?

A. I cannot testify here under oath that he had.

Q. No.

A. I don't know positively.

Q. Now, you knew in May, 1935, that there were compass adjusters here in Seattle, didn't you?

A. Yes, and we used them whenever the occasion warranted it.

Q. You used them?

A. We used them.

Q. Under what conditions would you use them?

A. Whenever we had the necessity of making an adjustment of a compass we would call in an expert.

(Testimony of Thomas B. Wilson.)

Q. Just tell us in detail when you yourself would decide when a compass needed adjustment.

Mr. Bogle: I object to that.

A. I didn't decide that.

Mr. Bogle: I object to that. He never said that he decided it. He said that he delegated this—

Mr. Ryan: (Interposing) Please do not say what he said.

Mr. Bogle: Wait until I am through.

The Court: Both counsels please state their objections to the Court.

Mr. Bogle: I was in the process of doing that, Your Honor. He testified that he delegated this phase of the company's business to Mr. Murphy, and I think [581] that this question is not cross-examination to any extent.

Mr. Ryan: He has not used the word "delegated" and the man was a subordinate of his in his own office. There was no question of delegation at all.

The Court: You can ask him whether or not he did such a thing.

Mr. Ryan: What is that?

The Court: You can ask him whether or not he did such a thing as you inquired about.

Q. (By Mr. Ryan) Did you ever order a compass adjusted on any of your vessels before you put your personal o.k. on that that ship was fit to go to sea, and it was all right to send her out with cargo and passengers on board?

(Testimony of Thomas B. Wilson.)

A. No, I never ordered it.

Q. Why didn't you?

A. Because that was delegated to another officer of the company.

Q. Is there anything in writing to show that you delegated that?

A. No, other than the assignment of those duties.

Q. You mean Petitioner's Exhibit 7?

A. Yes.

Q. Well, in view of the fact that you knew that there were compass adjusters here at Seattle who were in the business of adjusting compasses, why didn't you make some provision that before you put your personal o.k. or order on sending this "Denali" to sea that you should first receive a report from one of those adjusters that [582] he had inspected the compass and that it was fit for the ship to go to sea with?

Mr. Bogle: I object to that, if Your Honor please. The witness has already stated that he was not here when the "Denali" left for sea. He was in Alaska.

The Court: The objection is overruled. He may answer the question.

The Witness: What was the question?

(Question read)

A. Well, in the first place I would not put my o.k. on the ship. I was not here, and I would not have done it had I been here, because that duty is delegated to a responsible officer of the company.

(Testimony of Thomas B. Wilson.)

He was the one that made the decision as to whether he needed an outside compass adjuster or not.

Q. (By Mr. Ryan) Wait a minute. Didn't you testify that the "Denali" was in that class of vessels of your fleet such that it would not be sent to sea without a request first being made by the traffic manager, Baker, and your personal o.k. on its going to sea after you got a report from Murphy? Didn't you testify to that?

A. Yes, but that o.k. is from a wholly different standpoint.

Q. But it was not supposed to be—your sending her to sea without knowing whether the ship was in fit condition to go, is that right, or getting any report to that effect?

A. No, that is not right either.

Q. Well, then, what is right?

A. The first o.k. was if there was ample and sufficient [583] business that warranted to load the ship and move it. That is from a traffic revenue standpoint. The second o.k. was that after I had talked in my office or communicated with the superintendent of maintenance whether that ship or what ship that was used would be available to sail on approximately that date, having in mind inspections and any maintenance or repair work that might be under way, which is prosecuted at that time of the year.

Q. And that report would be made to you, and you would o.k. it, is that right, and give the order?

(Testimony of Thomas B. Wilson.)

A. I would get the o.k. from him which ship was seaworthy and ready to go.

Q. And then you would order her to go?

A. Then I would approve taking that ship out for the voyage.

Q. Well, didn't you know that Mr. Murphy had never adjusted a compass in his life?

A. No.

Q. Did you know that he had adjusted a compass in his life?

A. Well, on that point I cannot state positively.

Q. You never made any inquiry to find out whether this man was competent to ascertain whether that compass was in good condition or not?

A. I have already said that we used the outside compass adjusters when the necessity arose.

Q. Then describe what you mean by "when the necessity arose" in that respect.

A. When there was some cause to have the compass checked and adjusted.

Q. How would you determine whether or not there was some [584] cause?

A. I understand that came in from the Captain's reports.

Q. Did you see those reports?

A. Yes.

Q. Then what would you do about them?

A. I saw his voyage reports.

Q. Well, there was no captain on the "Denali" for seven months preceding her being ordered to sea on this occasion in May, 1935, was there?

(Testimony of Thomas B. Wilson.)

Mr. Bogle: They are anticipating, Your Honor. There is no testimony about that yet in the record.

Mr. Ryan: You asked him about what employees—

The Court: (Interposing) The objection is overruled.

A. That is true. The ship had been laid up some during the winter months. The exact period I do not know without looking up the records.

Q. You personally knew that she had been laid up all winter, didn't you?

A. Yes.

Q. And there was no captain aboard?

A. Well, no direct assignment.

Q. Yes.

A. We had lots of captains and mates in the yard on different ships there.

Q. There was no captain aboard the "Denali" during that winter, was there?

A. What do you mean, assigned steadily?

Q. Yes.

A. No. No one assigned permanently on the ship while she [585] was laid up.

Q. So that the job of determining in what condition she was just before she was sent to sea was a duty that your home office here was determining, isn't that so?

A. Again that would come under the superintendent of maintenance, and if the ship was in per-



(Testimony of Thomas B. Wilson.)

fect condition from the reports when she laid up, you would assume that that changes when she starts out again—is that the basis of your question?

Q. Do you know anything yourself about compasses?

A. A little.

Q. Well, what do you know?

A. Well, not a great deal—not enough—in any sense to put myself up as any authority on them.

Q. All right. Suppose a ship lies on the same heading for several months in Seattle, or anywhere else in the world, what does that do to her compasses?

Mr. Bogle: That is objected to, Your Honor. He says that he does not claim to be an expert on compasses.

The Court: If he knows he may answer.

A. I am not prepared to say.

Q. (By Mr. Ryan) Well, you said that you knew something about compasses. Do you know what effect that has on compasses or not?

A. I have said that I did not.

Q. Did you ever make any provision when you were reorganizing the company for the employment of compass adjusters to examine these ships that were in the laid-up fleet, without any masters aboard at all, just lying [586] there for months at a time before you sent them out to sea, to see if they were in fit condition to go to sea so far as the compasses were concerned?

(Testimony of Thomas B. Wilson.)

A. The arrangement had already been made when I joined the company. I never changed it.

Q. What was the arrangement?

A. As I have already stated, whenever a compass needed attention the adjuster was called.

Q. Yes, but there was no master on board, and the ship was lying there under your jurisdiction, right here in Seattle, with no officer on board at all for several months.

(Witness does not answer)

Q. You would not have anything from a master to give you any inkling of what was wrong, if anything was wrong, or as to what the condition of the compasses was, isn't that so?

A. Well, first you make it plain——

Q. (Interposing) Please answer the question, and we will get along faster.

A. Well, you have asked several questions there. What do want me to answer?

Mr. Ryan: Read that question.

(Question read)

A. No, I do not think it is, for this reason, that we had plenty of masters and mates with those very ships over there, and if there was anything wrong we had ample opportunity to know something about it.

Q. There was nobody assigned to this ship at all during the seven months preceding her sailing, was there? [587]

(Testimony of Thomas B. Wilson.)

A. I think there was. I think Mr. Murphy can tell you.

Q. Well, I do not want you to speculate. Do you know on that point on the "Denali"?

A. I know that some of them were assigned on certain ships, the details of which I cannot give you.

Q. You do not know anything at all with reference to the "Denali" in that respect, do you?

A. There was someone assigned to her.

Q. Who was it?

A. But as to who it was, you can get it from the superintendent when he testifies.

Q. You don't know of your own knowledge?

A. No.

Q. Did you ever make it clear—I will strike that.

In reorganizing the company did you appoint anyone who was competent to adjust compasses to do any adjustment of the compasses that might be necessary, and to examine compasses to see whether they needed adjusting on ships which had no master on board and which were lying for several months in your laid-up fleet here?

A. I personally did not, no.

Q. Why didn't you do it?

A. Because it was delegated to the superintendent of maintenance. That is part of the duties on his part that he did not have to refer to me whatever.

Q. But you never told him anything orally to that effect about that, did you?

A. I cannot recall orally instructing him on it.

Q. And all you ever gave him was this written affair—Petitioner's Exhibit 7? [588]

A. That is right.

Q. In which the word "compass" is not even mentioned, is it?

A. That is right.

Q. I notice that it is addressed to Captains also. Did you ever issue any instructions to captains of ships, or masters of ships, that they should have the authority without conferring with anybody to go out and have the compasses adjusted, and employ a compass adjuster to do it where it was necessary in their judgment?

A. You mean for the captain to call the adjuster in himself?

Q. Yes, without conferring with anybody in your company so far as the ship at Seattle was concerned.

A. I do not recall of any instructions of my own personally on that point—

Q. Can you give me any instance on which any of your masters ever did that, or ever exercised such authority?

A. I think probably they have, but—

Q. (Interposing) I do not ask you to speculate. I ask you do you know of any instance in which it was ever done?

(Testimony of Thomas B. Wilson.)

A. I still insist on saying that they probably have, but I cannot put my finger on any case.

Mr. Ryan: I move to strike the answer as speculative and not responsive.

The Court: The objection is overruled and motion denied.

Mr. Ryan: All right. [589]

Q. (By Mr. Ryan) I ask you to produce the records of your company showing the adjustment of compasses on the "Denali"?

A. I cannot recall it here out of my memory.

Mr. Ryan: Well, I ask that they be produced for the purpose of cross-examining this witness.

Mr. Bogle: It is not proper cross-examination.

The Court: Pardon?

Mr. Bogle: I do not think it is proper cross-examination of this witness. He has testified as emphatically as a man could that he had nothing to do with the direct supervision over the maintenance or equipment; that that came under Mr. Murphy, and when Mr. Murphy is on the stand we will produce all the records that we have in that connection.

Mr. Ryan: If the Court please, this man has testified that he is the vice-president and general manager; that that duty was not delegated to anybody else in the company at all; that this man Murphy was a subordinate under him. He does not know whether he had any service in the deck department at all, or knew anything about adjust-

(Testimony of Thomas B. Wilson.)

ing compasses. The records of the company, I want them for the purpose of cross-examining this witness and showing the falsity of the last answer that he just gave.

The Court: I am deferring ruling on the demand of the production of documents until tomorrow, and your request at this time is denied.

Mr. Ryan: Then I ask leave now to reserve my cross-examination of this witness until the records of [590] the company are produced, in connection with the matters which he has been called upon to testify.

The Court: On that point?

Mr. Ryan: Yes, and ask that he be ordered to stay here until that is done.

The Court: That will be done, after you have finished your cross-examination of this witness, if you desire to cross-examine him further.

Mr. Ryan: Yes, I do.

The Court: Proceed with your cross-examination.

Q. (By Mr. Ryan) Now you say that you delegated this duty of having the compasses adjusted to a responsible officer of the company. Who did you mean by that, a responsible officer of the company?

A. I meant Mr. E. M. Murphy, superintendent of maintenance who was eminently qualified to handle that department and all phases of the work that came under it.



(Testimony of Thomas B. Wilson.)

Q. Well, you make the statement that he was eminently qualified, but you do not know whether he had ever adjusted a compass in his life, do you, or——

The Court: (Interposing) I think you are inclined to argue with the witness too much. I think you have asked that question in many different forms.

Mr. Ryan: Yes, Your Honor.

The Court: Proceed.

Q. (By Mr. Ryan) Who hired the deck officers and masters of the ships of your company, including the "Denali"?

A. They were employed by F. B. Tracy, the general agent of the company.

Q. And then who fired them whenever that was thought to be [591] necessary?

A. Well, they were first fired by the captains, if they were junior mates, which would be confirmed by him. And in cases of old employees that came to me.

Q. Well, your written instructions to Mr. Tracy, Petitioner's Exhibit 9, were that he had authority to employ the entire personnel under his jurisdiction, isn't that right? Just like that—no qualification, but no regular employee shall be removed without just cause. It does not say anything about referring it to you, does it?

A. Well, you ask me how it was handled, and I am telling you.

(Testimony of Thomas B. Wilson.)

Q. Well, at any rate the man who hired and fired the officers of the ships of the company—the deck officers was Mr. Tracy, wasn't it?

A. The deck officers, yes, sir.

Q. Yes. Mr. Tracy was the operating manager, too, wasn't he?

A. No.

Q. Well, who was the operating manager?

A. Well, as far as manager of the company is concerned, again I repeat that I was general manager.

Q. Although somebody else hired and fired the deck officers you were operating manager, is that it, at the same time?

A. I don't know what you mean by "operating manager".

Q. You had never been in the steamship business before you were appointed general manager of this company except to the extent which you just testified here a few minutes ago, isn't that so? [592]

A. Well, that was sufficient, I think.

Q. Who was the operating manager of the Pacific Mail Steamship Company while you were there?

A. Mr. Schwearin.

Q. In whose department were you?

A. I was in his department.

Q. What was your title?

A. I was assistant to the dock superintendent at one time.

(Testimony of Thomas B. Wilson.)

Q. The dock superintendent?

A. Yes, sir.

Q. But you never had anything to do with the hiring or firing of the deck personnel, or with the compasses, or anything in that connection, did you?

A. No.

Q. Schwearin did all of that, didn't he?

A. No, I don't think that he did. He occupied the same position there as I did here.

Q. Well, on your testimony you say, first, you delegated this duty of seeing to it that the compasses were in good condition before the ship sailed to Mr. Murphy, a responsible officer of your company. That is right, isn't it?

A. Yes.

Q. Then you go on to say that there is something about the master of the ship having something to do with it. Now, who was the man to whom you delegated this duty?

A. I repeat, Mr. Murphy.

Q. To Mr. Murphy?

A. Yes, sir.

Q. Mr. Murphy was supposed to see to it that the compasses [593] were in good condition when the ships sailed, is that right?

A. That is right.

Q. Didn't you have an operating department in your company?

A. We had a transportation department.

Q. Didn't you have an operating department?

(Testimony of Thomas B. Wilson.)

A. Well, yes, if that is what you want to term it. I have already explained the departments, their outlines and their organization, and who headed them.

Q. Didn't you call it an operating department in Petitioner's Exhibit 5 that was not received—you, yourself?

A. That word is synonymous. It is used back and forth by different people—operating or transportation. If you will permit me to explain, when I said that a captain probably had done this—

Q. (Interposing) I do not ask you for any probabilities at all. If you want to testify to anything like that wait until the question is asked of you—

A. (Interposing) Very well.

Q. (Continuing) On guesses.

Mr. Bogle: I think that he should have the opportunity to answer that.

Mr. Ryan: You can bring that out on redirect examination if you want to.

The Court: The objection to the answer is sustained, and the voluntary answer is stricken. The ruling calls for no further comment. Proceed.

Q. (By Mr. Ryan) Have you the order which put the "Denali" into commission in May, 1935?

[594]

A. Yes. It is in the records, but I haven't got it here.

Mr. Ryan: I ask that it be produced.

(Testimony of Thomas B. Wilson.)

Mr. Bogle: If Your Honor please——

The Court: (Interposing) The matter of the production of records has been deferred until tomorrow. Proceed. You may reserve the right to call for them at that time. [595]

Mr. Ryan: Well, I wanted to base some cross-examination——

The Court: At that time it may be called for.

Q. (By Mr. Ryan) Well, the duty of seeing to it that the compasses of the “Denali” were in good condition before she was sent to sea was a duty to be performed by the maintenance and repair department before the vessel went out, under the jurisdiction of the operating department, isn’t that so?

A. Yes, sir; the same as the engine or the winch, or anything else.

Q. That is, it went to the seaworthiness of the ship, rather than to something happening afterwards, during operations, isn’t that right?

A. That is a question——

Q. (Interposing) Do you understand the question?

A. I don’t know whether you are making an observation or asking me a question.

Q. Well, I will ask you a question, then, that you will know is a question. In your opinion is a ship fit to go to sea if you do not know what the condition of her compasses is?

(Testimony of Thomas B. Wilson.)

Mr. Bogle: I object to that as not proper cross-examination.

The Court: I will give you two more minutes to finish your cross-examination on the question of the compasses, so far as this witness is concerned.

Mr. Ryan: If Your Honor please, may I suggest that the question of the compasses is one of the most important questions in this case. [596]

The Court: That may be, but you are asking the question here of his knowledge of the compasses and their readjustment.

Mr. Ryan: I am not asking about the readjustment now; I am just asking whether he has an opinion—he is vice-president and general manager of the company, and I do not want, Your Honor to say that this is something that must be finished up in two minutes' time, because it is the most important point in the case.

The Court: You may finish your cross-examination of the witness on that basis in two minutes, and then proceed to something else.

The Witness: Will you read the question again?

(Testimony read.) Well, the compasses, the same as the other important phases of the equipment, should be in good shape, working satisfactorily. That goes without saying.

Q. Who signed the order putting the "Denali" into commission?

A. My assistant.

Q. In May, 1935?



(Testimony of Thomas B. Wilson.)

A. The assistant to the vice-president, Mr. McKinstrey.

Q. While you were away he had all the authority you had while you were here, is that right?

A. Yes. He had complete authority over the operation of the company.

Q. What was the date of that order?

A. I cannot state.

Q. You do not know about the date of it?

A. Well, I imagine it was around the first of May.

Q. What is the date of the report that was made by the [597] transportation manager, Mr. Baker, or the traffic manager, Baker, requesting that the "Denali" go out?

A. I cannot say.

Q. Do you know the date of it, about?

A. No, I do not. It would be around the end of April. It would be just prior to the order issued to bring the "Denali" out.

Q. When did you leave Seattle to go to Alaska?

A. I think I left on the 12th or 13th of April.

Q. How long were you gone?

A. About five weeks.

Q. You testified on direct examination that there were other means and methods by which the shippers would know the date of the sailing of the "Denali"; what were those means and methods?

A. Well, some of the schedules were carried in the newspapers as an advertisement both here and

(Testimony of Thomas B. Wilson.)

in Alaska. Also, we have a service clerk in the traffic department who notifies shippers by telephone that usually have tonnage to move. He talks with their traffic men.

Q. What was the date that you advertised in the papers and notified the shippers that the "Denali" would sail from Seattle?

A. I think it said about the 15th. That date on freighters is set as an approximate date.

Q. You think in the newspapers it said about May 15th?

A. I am not sure that the "Denali" was one that was put in the newspaper. You asked me the different means.

Q. I say, do you know the date on which your company advertised in the newspapers to shippers as the scheduled [598] date for the sailing of the "Denali" from Seattle to Metlakatla and other ports?

A. No, I do not.

Mr. Ryan: I will ask for the production of that.

The Court: The demand will be considered tomorrow.

Mr. Bogle: Let me see what he wants, Your Honor; the production of what?

Mr. Ryan: The production of the notices sent out by this company to shippers, giving the scheduled date of the "Denali" sailing from Seattle on this voyage, together with the advertisements you put in the newspapers, and the notices in the "Shipping

(Testimony of Thomas B. Wilson.)

Guide" and "Index", and that sort of thing, fixing the scheduled date for the sailing of this ship.

Q. (By Mr. Ryan) Were the duties of the various officers of the company stated in writing, in the company's records?

A. Not completely, to my knowledge, because when I came with the company no changes were made in many of the departments by me.

Q. But there are writings defining their duties are there not, in the records of the company?

A. I would say not to my knowledge; not in a complete way.

Mr. Ryan: I ask that they be produced in as complete a way as they were.

Q. You haven't them here with you, have you?

A. No, sir.

Q. The president and first vice-president of this company had nothing at all to do with the maintenance, operations or repair of the vessels of the company? [599]

A. That is correct.

Q. They did not?

A. Not unless it represented some major capital expenditure, when I took it up with them.

Q. Your organization here was the whole company so far as every practical purpose was concerned?

A. Correct.

Q. So the president was not the chief executive of the company, was he?

A. Well, I think he was——

(Testimony of Thomas B. Wilson.)

Q. (Interposing) So far as management of any ordinary functions of the company were concerned?

A. As far as the management was concerned, I agree with you, but as far as the chief officer of the corporation is concerned, of course, he was.

Q. He had no administrative duties of any sort?

A. None assigned, but he could step in and exercise them, I presume, if he wanted to.

Q. But he never did?

A. He didn't while I was there.

Q. Doesn't the company have a port captain now?

A. No.

Q. Since the "Denali" was lost?

A. No.

Q. Do you know Capt. Gilmore, of the Alaska Steamship Company?

A. Capt. Gilmore?

Q. Yes; the port captain.

A. No, I do not.

Q. You never heard of a port captain of the Alaska Steamship [600] Company?

A. No. We had a port captain for a period in 1934, during the first strike interruption.

Q. What was his name?

A. Capt. Glasscock.

Q. Why didn't you keep him in your employment?

A. He is in our employment.

Q. What was his title?

(Testimony of Thomas B. Wilson.)

A. We brought him ashore temporarily, as I say, during the first strike difficulty, as port captain.

Q. Then when did you fire him?

A. I didn't fire him. He resumed his run on the ship.

Q. I see. But you discontinued the office of port captain of your company when, on what date?

A. I don't remember. I am again saying that I brought him ashore temporarily to meet an emergency, and when that was over he went back to his regular ship.

Q. What were the duties of the port captain?

A. Assisting Mr. Tracy.

Q. In what?

A. In selecting personnel for the ships, organizing crews.

Q. When the masters and officers came in they reported to Mr. Tracy, didn't they, at the end of the voyage?

A. They reported to him, yes.

Q. And they reported to him everything important that happened on the voyage, is that right?

A. In connection with the transportation, making the ports, or delays. They turned in their voyage reports to him.

Q. How about in connection with the operation of the vessel? [601]

A. Well, any matters needing repairs or attention went directly to Mr. Murphy, as outlined in

(Testimony of Thomas B. Wilson.)

that circular, including the requisitions for operating supplies.

Q. How about a report as to the operation of the vessel? Short of an actual requisition for repairs or supplies?

A. I don't know what you mean—a report about the operation of the vessel.

Q. How the vessel was operating, what had happened to the engines, and how they fixed it or attempted to fix it, and what difficulties they had had on the voyage, and that sort of thing. Wasn't that report made by the masters of the vessels to Mr. Tracy?

A. No. Anything about the engines or how the vessel acted, or anything like that would be——

Q. (Interposing) Outside of the engines and the deck department, I mean. Wasn't that, in the ordinary course, made to Mr. Tracy?

A. No.

Q. Do you know?

A. No—yes; I do know.

Mr. Bogle: Will you read that question and answer.

(Testimony read.)

Mr. Ryan: I agree with the statement of the witness that he doesn't know, and I ask that his answer to the question before that be stricken out.

Mr. Bogle: He started to answer the question before——

The Court: Motion denied. Proceed.



(Testimony of Thomas B. Wilson.)

Q. (By Mr. Ryan) You do not know to whom the masters of the vessels reported?

A. Why, certainly, I know. [602]

Q. As to the efficiency of the operation of the equipment in the deck department, do you?

A. Certainly, I know.

Q. To whom?

A. As I am trying to explain, repeatedly, the reports were divided according to what the subject matter was. They were reported to Mr. Tracy, but the crew, their replacements of their mates, or the like, or handling cargo in and out, any trouble with the cargo, any delay in reaching a port, or getting the cargo out, anything that related to the physical part of the ship, its repairs, its condition, or its non-performance, and any supplies, both deck and engine, went directly to Mr. Murphy.

Q. Were you present when any such report was made?

A. I have been present.

Q. In connection with the "Denali"?

A. No. I was not here.

Q. Had Mr. Tracy had any experience at sea, so far as you knew, in the navigating department of a ship?

A. Not in the navigating department, to my knowledge.

Q. With whom were the abstracts of the log books filed by the masters of the ships?

(Testimony of Thomas B. Wilson.)

A. I think they were filed with the chief clerk of the transportation department, or operating department, as you insisted on calling it.

Q. That is, Mr. Tracy.

A. In his office. They were filed there for the record. I think that is correct.

Q. Did you get any other written reports from the masters [603] with reference to the operation of the vessels, other than those abstracts of the logs, in the ordinary course?

A. Yes; they rendered their regular voyage reports, and also gave me a letter direct on any conditions surrounding their voyage, matters of operating or traffic interest.

Q. With whom would that be filed?

A. With me. They came directly to me.

Q. To you?

A. Yes.

Mr. Ryan: I ask that they be produced.

Mr. Bogle: You mean for this vessel?

Mr. Ryan: With reference to the "Denali", yes.

Mr. Bogle: If Your Honor please——

The Court: (Interposing) You will have to keep a list of those things and present them to-morrow.

Mr. Ryan: They are all included, but this thing right here is something I didn't know about until this moment.

The Court: You will have to keep an accurate list of those things and call them to the Court's atten-

(Testimony of Thomas B. Wilson.)

tion in connection with the whole matter tomorrow.

Mr. Bogle: I haven't a list of them.

Mr. Ryan: When I make a demand like this, Your Honor, it is the usual practice that counsel will make a note of it. I will wait here until he makes a note. I am making a demand in each instance.

Mr. Bogle: Let me get his demand, then. You are demanding——

Mr. Ryan: The documents the witness just testified [604] to on the record.

Mr. Bogle: You tell me what you want, and not what the witness says.

Mr. Ryan: I will ask the court reporter to give you a description of them as given by the witness.

The Court: You want what is classified as an abstract of the log?

Mr. Ryan: An abstract of the log book that went to Mr. Tracy's department.

The Court: And the other was for the voyage report?

Mr. Ryan: The voyage report, and other reports made to this man on the stand.

Mr. Bogle: Just a minute, Mr. Ryan; the voyage reports——

The Court: Made to Mr. Wilson in his capacity as vice-president and general manager.

Mr. Bogle: That is, on the "Denali", and covering what period of time?

(Testimony of Thomas B. Wilson.)

Mr. Ryan: Well, since her compasses were last adjusted.

Mr. Bogle: I think we ought to at least determine what the relevancy of some of this is.

The Court: That gives you notice of what it is he wishes.

Mr. Bogle: I see.

The Court: That is the extent of his request.

Q. (By Mr. Ryan) Who in your company determined what charts should be supplied to the "Denali" when she was being ordered to sea in May, 1935?

A. Mr. E. M. Murphy. [605]

Q. Well, so far as you know Mr. Murphy had no competency in determining that question, in view of the fact that he had never served at sea in the deck department, isn't that so?

A. No, I didn't say that. I think he was entirely competent, and I have said so many times.

Q. Although he had never navigated a ship in his life you think he knew just what charts were necessary on that voyage, is that right?

A. I do not think that is a necessary qualification in order to supply adequate charts.

Q. What charts should be supplied to a ship like the "Denali", being sent to sea in May, 1935?

The Court: If you know.

Q. If you know.

Mr. Bogle: I submit, Your Honor, this is no cross-examination.

(Testimony of Thomas B. Wilson.)

Mr. Ryan: Yes. He said he was in charge of the operations, maintenance and repair of these vessels, including the "Denali".

Mr. Bogle: He said he was not. That is the difference.

Mr. Ryan: Or one of his subordinates in his office, and not some third person.

The Court: Objection overruled. If he knows the answer he may give it.

The Witness: Generally speaking, the various charts covering the coast line of Alaska.

Q. (By Mr. Ryan) You do not know what they are, do you?

A. I cannot remember. [606]

Q. You haven't the vaguest idea what their numbers are?

A. There is a regular list of them.

Q. Where is the regular list? Will you produce it?

A. Mr. Murphy will have that.

Mr. Ryan: I ask that it be produced.

Mr. Bogle: Wait a minute, now; let us get this.

Mr. Long: All the list of charts for Alaska.

Mr. Ryan: The list of charts supplied to the steamship "Denali" in May, 1935, on her being ordered to sea, and the records of the company showing that those were the charts delivered to the ship by Mr. Murphy, or some other person.

Mr. Bogle: That is not what you asked the witness to produce.

(Testimony of Thomas B. Wilson.)

Mr. Long: Not at all.

The Court: Well, proceed.

Mr. Ryan: Yes. I will ask you to produce that. I am asking the witness to produce it.

Mr. Bogle: Your Honor, he is asking the witness to produce one thing, and asking me to produce another.

Mr. Ryan: I am asking you both to produce both things I am asking for. Does that settle it?

Mr. Bogle: I do not know what he wants.

Mr. Ryan: I ask the reporter to read back the last two demands, so Mr. Bogle can copy them.

The Court: The reporter will kindly read it.

(Testimony read.)

Mr. Bogle: You want a list of the charts actually delivered to the "Denali", the Government list of charts?

Mr. Ryan: No; I never used the word "Government". [607] I want the list of the charts actually supplied to the "Denali", that were on board her on this voyage, as shown by the records of the company, and I want the records of the company showing that those were the numbers of the charts supplied and that were on board on her sailing.

Q. (By Mr. Ryan) Was Mr. Murphy the sole responsible officer of the company to determine what charts were to be furnished to the "Denali" in sailing in May, 1935?

A. Yes.



(Testimony of Thomas B. Wilson.)

Q. Was Mr. Murphy the sole responsible officer of the company to determine, in May, 1935, whether or not the compasses of the "Denali" should be adjusted?

Mr. Bogle: I think he has gone over that at least twenty times, maybe twenty-five times.

The Court: I do not recall the question having been asked in this particular form, if Mr. Murphy was the only one responsible. You mean responsible to this witness as the official that he then was?

Mr. Ryan: Yes, Your Honor.

The Court: Whether or not Mr. Murphy was the sole person responsible to this official of the company on that phase of the activity?

The Witness: He was, as far as I was concerned as vice-president.

Q. You testified on direct examination, as I recall it, that Petitioner's Exhibit No. 2 showed the winter sailings on the Southeastern Alaska route?

A. I did not.

Q. I show you Petitioner's Exhibit No. 2 and ask you to testify now whether or not you were in error in that [608] statement?

The Court: The witness has just said that he didn't so state, did not make that answer.

Q. Is there a list of the winter sailings of the vessels of the Alaska Steamship Company fleet during the winter of 1934-1935 and 1935-1936. That is the question?

(Testimony of Thomas B. Wilson.)

A. There is. That is printed, the same as the spring and summer schedules. I do not have those lists.

Mr. Ryan: I ask that those be produced.

The Court: What is it you now wish produced?

Mr. Ryan: The printed pamphlet showing the winter sailings of the vessels of this company during those two winters.

Mr. Bogle: During the two winters?

Mr. Ryan: 1934-1935 and 1935-1936.

Mr. Bogle: The vessel was gone in 1935.

Mr. Ryan: During the winter, I said, of 1934-1935. Wasn't the "Denali" laid up here?

Mr. Bogle: Let us get your demand. You wanted 1934-1935, and that is all right, but you also said 1935-1936.

Mr. Ryan: I did not mean that. I meant 1933-1934 and 1934-1935.

Mr. Bogle: You want 1933-1934 and 1934-1935.

Mr. Ryan: Yes.

Q. (By Mr. Ryan) Was there any other person that you know of whose duty it was or whose responsibility it was to determine what charts should be supplied to a ship being ordered out from the laid-up fleet, like the "Denali" in May, 1935? [609]

A. I have already testified that as far as I was concerned that was up to Mr. Murphy, and came under his jurisdiction. He would handle that without coming to me.

(Testimony of Thomas B. Wilson.)

Q. Is that same thing true as to the compasses?

A. Correct; and the same with the propeller, the same with an engine, or anything else.

Q. When the "Denali" was ordered out to sea on this voyage in May, 1935, an entire new set of officers were put on board her?

Mr. Bogle: That is not cross-examination, Your Honor. The witness wasn't here.

Mr. Ryan: He was in charge of operations and maintenance.

Mr. Bogle: He was not here. He has testified to that. He was not here when the vessel sailed. He has testified to nothing in connection with the personnel of this vessel.

Q. (By Mr. Ryan) If you know.

A. I do not know.

Q. Do you mean to say a master could be appointed without you knowing about it? I thought you testified on direct examination that that could not be done.

A. That is right.

Q. Then I will ask you again——

A. (Interposing) In my absence certain matters, of course, were handled with me by long distance telephone, or telegraph. I cannot recall offhand whether the master's name was telegraphed to me in Alaska or not. In this particular instance, I cannot swear to it. But if I could be reached I passed on each master before he was [610] assigned. However, all these men were old employes of the company, and were already on the qualified list of masters.

(Testimony of Thomas B. Wilson.)

Q. Mr. Healy was the master on this voyage, wasn't he?

A. That is correct.

Q. Had Mr. Healy ever been a master of a vessel before this voyage?

A. Oh, many times.

Q. Which ship?

A. Well, I cannot call them all by memory, but I know that he had been master the previous year on a ship of this same class, the same tonnage, a sister ship.

Q. A master?

A. Yes. I cannot recall which one. We had five of them of that class.

Q. Has he been master of any ship since?

A. Yes.

Q. What ship?

A. Well, I know this summer he was master of the "Laknai", or I believe it was the "Curacao". They are sister ships.

Q. He was not second mate?

A. I beg your pardon?

Q. He was not second mate?

A. No; he was master, I say.

Q. How old is he?

A. I don't know exactly. I would have to look up his record. But this was a passenger ship that he was on this summer.

Q. Who had authority to employ the pilots?

(Testimony of Thomas B. Wilson.)

A. They are selected by the man in charge of the trans- [611] portation department that assigns the master and pilots.

Q. Mr. Tracy?

A. Yes.

Q. Who succeeded Mr. Murphy with this company?

A. Mr. J. D. Gilmore.

Q. What is his title?

A. He is port engineer.

Q. What happened to Mr. Murphy's job?

A. There has nothing happened to it.

Q. Who reorganized the company to make this man merely a port engineer?

Mr. Bogle: If Your Honor please, I think this is certainly not proper cross-examination. Counsel is getting down now to a period long past the date of the accident.

The Court: What is there in the direct examination that makes it proper cross-examination?

Mr. Ryan: This is the man who reorganized the company. One of the criticisms of this man is that he did not make proper provision for a competent person in order to ascertain that the compasses were in good condition before these ships were taken out of this laid up fleet, for several months, and sent to sea. The fact that the organization of this company is being jumped back and forth through several different forms, and the duties mixed up, with a kaleidoscopic effect like that, and this man being

(Testimony of Thomas B. Wilson.)

responsible for one of those shake-ups, and he didn't make provision for the specific thing here that in all probability caused the loss of this ship, that is one of the important points in the case. [612]

Mr. Bogle: If Your Honor please, I think we ought to——

The Court: As to the reorganization of the company afterwards, it has not been made to appear why that should be material on cross-examination.

Mr. Ryan: Well, this witness has testified that the man who was performing the duties of Mr. Murphy is merely a port engineer, while before he had been testifying that Mr. Murphy had duties far outside of those of any kind of port engineer that you can think of, in the deck department.

The Court: The objection made to the question is sustained.

Q. (By Mr. Ryan) What are the duties of a port engineer of a steamship company?

Mr. Bogle: I object to that, if Your Honor please.

Mr. Ryan: I want to find out.

Mr. Bogle: We object to the general question as to what are the duties of a port engineer of any steamship company.

Mr. Ryan: This is an unusual set-up, and I think we are entitled to show it.

The Court: Objection overruled. If he knows the answer to the question he may answer.

The Witness: I presume they vary a good deal by companies.



(Testimony of Thomas B. Wilson.)

Q. I do not want any presumption or guess. If you do not know, just say so.

A. I can tell you what the duties are in the Alaska Steamship Company. [613]

Q. You did not have a port engineer, did you, under the organization that you set up?

A. When?—In 1935?

Q. That is right.

A. No. We had it under another title.

Q. And you didn't have a port captain?

A. That is right.

Q. Did you have one with another title?

A. No. The only difference is that the title on the job was changed when we made a change of companies. I have already testified that that letter of instructions there, so far as I know, was still in effect up to the time I left the company.

The Court: At this point we will take a ten-minute recess.

(Recess) [614]

Q. Who in your company fixed the routes that the vessels of the company would follow?

A. That was fixed, as far as it was fixed, in our joint meeting in setting up printed schedules inasfar as the passenger ships were scheduled. Other than that the route was left to the master.

Q. Who in your company determined what aids to navigation should be supplied to the ship, and arranged for the supplying of them?

A. Mr. Murphy.

(Testimony of Thomas B. Wilson.)

Q. To whom were the old log books, that is, when the log books were filled, say of the "Denali", turned in in your company—to what officer by the master?

A. I think they were filed in the transportation office.

Q. That would be Mr. Tracy?

A. Yes, sir.

Q. To whom were the deviation books and azimuth compass record books turned in by the master?

A. They would all be filed in the same place, that is, in the dock office.

Q. With Mr. Tracy?

A. Yes, sir.

Q. And to whom would the master turn in the old deviation cards, that sort of thing, when they were superseded?

A. I don't know.

Q. Would that probably be turned in to Mr. Tracy, too?

A. Probably.

Mr. Bogle: He said that he didn't know, Mr. Ryan. I ask that the answer be stricken then.

The Court: I do not understand what Mr. Bogle says. [615]

Mr. Bogle: He asked him the question and the witness said that he didn't know. And then Mr. Ryan said, "Well, probably, did he do so and so?"

(Testimony of Thomas B. Wilson.)

And I ask or said that I moved that the answer to that be stricken unless he knew.

The Witness: Well, I don't know.

The Court: The motion is denied. The second answer to that question as I understand it now is that you didn't know?

The Witness: Right.

Q. (By Mr. Ryan) Who in your company determined when a ship should sail, for instance, the "Denali" on this voyage? That is, who fixed the sailing day?

A. Well, the traffic manager fixed that.

Q. Who was that, may I inquire?

A. L. W. Baker.

Mr. Ryan: I reserve the right of further cross examination of this witness when the records demanded have been produced, and I ask that the witness be instructed to remain available until that is done.

The Court: That request is granted. Will you kindly remain in attendance upon the Court as a witness until you are excused by Mr. Ryan?

The Witness: What does that mean, that I have to stay here in the courtroom?

The Court: Yes.

The Witness: Or be available on call?

The Court: Yes, until you are excused. However, if at any time your presence in the city requires that you be absented from the courtroom or from your [616] office, if you will make that known to both

(Testimony of Thomas B. Wilson.)  
counsel, that is all you need to do.

The Witness: Thank you. I appreciate that.

The Court: You have leave to absent yourself from the courtroom if both counsel consent to that, the counsel for the petitioner and counsel for the claimants.

Mr. Ryan: I will be very glad to accede to that, of course.

### Redirect Examination

By Mr. Bogle:

Q. Mr. Wilson, I understood you to testify on cross examination that the traffic manager fixed the sailing days or date?

A. That is right.

Q. Is that the schedule date, or who determines actually when the vessel shall cast off her lines and leave the dock?

Mr. Ryan: I object to that as leading and not proper redirect examination. I object to the form of the question.

The Court: Objection overruled. He may answer.

A. Well, the latter point, naturally, would be determined by Mr. Tracy, who was in charge of the loading of the ship—when her loading was completed.

Q. Does Mr. Baker have anything to do with the actual physical sailing of the ship?

A. Absolutely none. He only fixes the prospective time of [617] sailing.

(Testimony of Thomas B. Wilson.)

Q. Mr. Wilson, up to the time you left the company was there any man in the company's employ by the name of Captain Gilmore?

A. Not to my knowledge.

Mr. Dennis: Will you please speak a little louder?

The Court: Yes, speak a little louder, Mr. Wilson.

Q. (By Mr. Bogle) Was there anybody in the company's employ by the name of Captain Gilmore?

A. Not to my knowledge.

Q. And you didn't have a port captain at the time you left the company?

A. No, sir. I wish to correct that answer. I should say "Yes" to that. "Yes" is the correct answer to that last question. We didn't have a port captain.

Q. You haven't a port captain?

A. That is right.

Q. Do you know, Mr. Wilson, what knowledge your masters, holding a license from the U. S. Inspectors, have with reference to adjusting compasses?

Mr. Ryan: I object to that upon the ground that the witness has already testified that he has never served at sea and in the deck department. He is not qualified or competent to answer such a question.

The Court: Objection overruled.

Mr. Ryan: And, anyway—pardon me—I do not want to argue after the Court has ruled, but may I suggest this further? [618]

(Testimony of Thomas B. Wilson.)

The Court: I will consider your further objection.

Mr. Ryan: And I object further on the ground that what the master is examined about is determined by statute or regulation. That is the best evidence——

The Court: (Interposing) The question will be understood to be limited to what this witness knows, and if so limited he may answer the question, if he can.

A. Well, I know that they are required to know all of their navigation instruments and adjustments and handling of them in order to obtain their license. That is part of their requirements.

Q. (By Mr. Bogle) Mr. Wilson, you have testified that Mr. Murphy had complete supervision of all repair and maintenance of equipment?

A. Correct.

Q. And so far as you were concerned he was responsible to you?

A. Correct.

Q. Did he have any organization with which to attend to the details of that work?

A. Yes, indeed. He had his own office organization to work, and tend to the details for him.

Q. Whomsoever did the work under him, or whether he did it directly, he was responsible to you for the proper performance of that work?

A. Correct.

Q. Do you know, Mr. Wilson, whether at the conclusion of the last winter or fall voyage the



(Testimony of Thomas B. Wilson.)

master turned in a lay-up requisition for all repairs or maintenance work [619] to be done before the vessel was to go out the next spring?

A. You are speaking of any vessel?

Q. Yes, any vessel.

A. Why, no. That is one of our rules, that they make their requisitions on voyage repairs, and that would naturally follow when the ship came in which proved to be her last voyage when she would lay up in the yard. Then such a requisition would be made which, I have already testified, would go to Mr. Murphy.

Q. And if on the last voyage there was any defective condition of the compasses noted by the master, would that be noted in this requisition?

A. Yes, sir.

Q. And would that be corrected—

Mr. Ryan: (Interposing) I object to that as speculative. He is asking for the operation of somebody else's mind. He does not know anything about that himself.

The Court: If he knows.

A. I have seen many such requisitions and I would know that that would customarily be there.

Q. (By Mr. Bogle) I will ask you if it was the practice to take care of these requisition repairs during the lay-up period?

Mr. Ryan: May I ask—may I object to that question as leading, and ask that the examination on

(Testimony of Thomas B. Wilson.)

this subject be limited to direct questions. Ask him what the practice was, if he knows.

The Court: Yes. I think you ought to avoid [620] leading questions, and that is somewhat leading, but I assume that counsel is somewhat desirous of speeding up the redirect examination. But try to avoid asking leading questions.

Q. (By Mr. Bogle) Do you know what was done with reference to the requisitions as to lay-up repairs?

A. They were assembled, and Mr. Murphy would always make out a program of the maintenance work for the winter's season after the ships were laid up, which we went over together. He estimated the cost involved, and we checked them item by item. That was for a two-fold purpose, to do this work in an intelligent, and constructive way, and in a period that we had time to do it, and likewise to keep the licensed personnel people engaged in the winter time. Frequently we made work when we actually did not need it, in order to keep these men busy. We would build some addition, and do things that would normally not be necessary.

Q. Mr. Wilson, what, from your experience and your own knowledge, would you say was the average length of time that one of these freighters would be loading in and around Seattle Harbor from the time that she was placed on berth until she sailed?

A. A freighter of the type of the "Denali" usually a week in the Port of Seattle loading out, or close to a week.

(Testimony of Thomas B. Wilson.)

Q. Do you know of your own knowledge whether or not during the period of shifting from dock to dock in Seattle it is necessary for the masters to take bearings to check the compasses?

Mr. Ryan: That is objected to on the ground that [621] that also is leading, Your Honor. Ask him if he knows of any custom, and if so, what the custom is with reference to it. But this man has not been qualified so far as his experience at sea is concerned.

Mr. Bogle: I am merely asking what he knows of his own knowledge.

Mr. Ryan: This is asking for speculation on the part of a clearly unqualified witness.

The Court: The objection is overruled.

Mr. Bogle: Will you read the question?

(Question read)

A. Yes, it is.

Q. (By Mr. Bogle) Do you know whether that is a part of their duty?

A. Yes.

Q. Mr. Wilson, a question was asked you as to whether you knew what effect it would have upon a vessel to lay up on one heading for six or seven months. I will ask you if you know of your own knowledge whether the vessels so laid up at West Seattle mooring ground were ever laid up on one heading during the entire winter?

A. I do not think so. I think they are changed many times. They have a natural working of vessels in and out, and tying them up when they are in a

(Testimony of Thomas B. Wilson.)

group, and shifting them over into the inside position to work on them.

Mr. Ryan: I move to strike out what the witness thinks. He may state what he knows.

The Court: The Court will consider the question in the form it is put, and also the answer in the exact form that it was answered, and the motion is denied. [622]

Q. (By Mr. Bogle) Mr. Wilson, referring briefly to this Petitioner's Exhibit 7, was it intended by you, in issuing this letter—this circular letter, to confer upon Mr. Murphy the entire duty with reference to all ship's navigating equipment as well as her hull and engine repairs and maintenance?

A. Yes, sir.

The Court: Try to avoid leading.

Mr. Bogle: What is that?

The Court: Try to avoid leading, Mr. Bogle.

Mr. Bogle: I want to get his understanding, and then Murphy's understanding. I think that is all, Mr. Wilson.

The Court: You may proceed, Mr. Ryan.

### Recross Examination

By Mr. Ryan:

Q. How many times were you on board the "Denali" during the winter and spring of '34-'35?

A. I cannot remember. I kept no record of it.

Q. She was lying at the West Seattle dock of your company?

A. Yes.

(Testimony of Thomas B. Wilson.)

Q. How was she lying with reference to the lock—parallel with it, or how?

A. We had two positions. One was—one dock was extending out into the bay and the other was parallel to the shore. I am not sure what position she was in. The ships were shifted around repeatedly to get the berth to work on them, or to let another ship in or another one out. I [623] cannot say positively.

Q. Well, you were on board of her several times during that winter, were you?

A. Yes. I was on all of them.

Q. Do you know of any time during that winter that the "Denali" changed her position, and if so, when?

A. I cannot testify to that. I mean, that I do not have any accurate information on it.

Q. Who would know that?

A. I cannot say. Maybe Mr. Murphy can give you some light on it. I cannot say when a ship—how often it changed its position any more than your automobile in your garage.

Mr. Ryan: That is all, excepting that under the order the Court has made the records will be produced and then I will examine him further.

The Court: Will you be here, Mr. Wilson, at ten o'clock in the forenoon, and then afterwards counsel on both sides agree that you may be excused, you may be excused according to their convenience.

The Witness: Very well, sir.

(Testimony of Thomas B. Wilson.)

The Court: According to their mutual convenience.

Mr. Bogle: I understand the witness is being excused with the understanding——

The Court: (Interposing) He is now being excused until ten o'clock tomorrow morning.

Mr. Bogle: I understand that the further examination has some limitations upon it, has it, in connection with the——

The Court: (Interrupting) The Court will consider at the time the proper indication of it. [624]

Mr. Bogle: Very well.

(Witness excused)

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MELVIN McKINSTRY,

called as a witness on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name?

A. Melvin McKinstry.

Q. Are you associated with the Alaska Steamship Company?

A. Yes, sir.

Q. Were you associated with that company in May of 1935?



(Testimony of Melvin McKinstry.)

A. Yes, sir.

Q. What position did you hold with the company in May of 1935?

A. Assistant to the vice-president and general manager.

Q. When did you join the Alaska Steamship Company?

A. On June 9, 1933.

Q. What had been the general nature of your experience prior to joining the Alaska Steamship Company?

A. It goes back to 1918 when I first went to work for the Southern Pacific Company in the operating department. I worked for them from 1918 to 1927. Then I was with the Southern Pacific Motor Transport Company from 1927 to 1929, and then with the Pacific Greyhound Lines from 1929 to 1933. [625]

Q. In what position?

A. Well, as a youngster I started out as secretary to the operating or division superintendent of the railroad. Then I was promoted to assistant chief clerk in the division office; spent some time on the road as brakeman, switchman, and some experience in the yard. When I went with the Southern Pacific Motor Transport Company it was as office manager and assistant to the vice-president. With the Pacific Greyhound Lines I was corporate secretary-treasurer and assistant to the president.

(Testimony of Melvin McKinstry.)

Q. At that time Mr. T. B. Wilson was president?

A. Yes, sir.

Q. Then you joined the Alaska Steamship Company shortly after Mr. Wilson assumed the position and duties of vice-president and general manager?

A. Nine days after.

Q. Now, Mr. McKinstry, were you familiar with the duties of the various departments of the Alaska Steamship Company in May of 1935?

A. Yes, sir.

Q. You have heard Mr. Wilson's testimony as to how the company was organized into departments?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Mr. Ryan: That is objected to on the ground that—

Mr. Bogle: (Interposing) Well, I can go all through this, if you want me to.

Mr. Ryan: I would like to have this witness testify— [626]

Mr. Bogle: (Interposing) Well, then, I will go through the whole thing. Evidently you don't want any short cut at all.

Mr. Ryan: I want to shorten it, yes, but I want to confine it to the witness' knowledge.

The Court: Proceed.

Q. (By Mr. Bogle) Mr. McKinstry, in May of 1935, in just what department and what delegation

(Testimony of Melvin McKinstry.)

of duties was the Alaska Steamship Company divided?

A. Well, there was, first, of course, the executive department in charge of the vice-president and general manager, to whom all of the other department heads reported, as follows: Mr. L. W. Baker was traffic manager in charge of solicitation of traffic, both freight and passenger; Mr. E. M. Murphy was superintendent of the maintenance department, in charge of the physical upkeep of the vessels' equipment and everything in connection with the maintenance of the vessels; Mr. W. T. Ford was in charge of the accounting department as audited, and also as secretary of the company; Mr. W. B. Sprague was in charge of the purchasing department; Mr. C. O. Nelson was assistant purchasing agent and port steward, and Mr. Tracy was in charge of the transportation department.

Q. Now, coming back to the executive department, were you a member of the executive department?

A. I was assistant to the vice-president and general manager, and also a director of the company.

Q. Then you and Mr. Wilson were the executive officers?

A. Yes, sir. [627]

Q. And how much of a clerical department did you have?

A. We had two, the secretary to the vice-president and another steno-clerk.

(Testimony of Melvin McKinstry.)

Q. What, particularly, were your duties in the executive department?

A. Well, as assistant to the vice-president I was naturally familiar with all the subjects moving through that office; handled a great deal of the detail; presented it to the vice-president for his approval, or he would give me instructions to work on certain matters, all in connection with the company in the various departments.

Q. And in the absence of Mr. Wilson, the vice-president, and general manager, what were your duties?

A. I would make the decisions in the executive department, unless they were of a major nature, in which event I would either telephone, if he was available by phone, cable if he was at sea, or wire for instructions.

Q. If you could reach him?

A. If I could reach him.

Q. Now, in the traffic department you said that Mr. L. W. Baker was the head of the department?

A. Yes, sir.

Q. And in what sub-divisions was that department organized?

A. Into the freight and passenger. For instance, Mr. Peterson was general passenger agent, reporting direct to the traffic manager. Mr. J. D. Nelson was general freight agent, reporting direct to the traffic manager.

(Testimony of Melvin McKinstry.)

Q. Under what department did the city ticket office——

A. (Interposing) That fell under the traffic department, [628] reporting to Mr. Peterson, and through Mr. Peterson to Mr. Baker.

Q. Do you know, approximately, how much clerical work or clerical help, in addition to those departments and subdepartment heads, there were in the traffic department?

A. I would guess there were about twenty-five, including the city ticket office.

Q. What duties, if any, did the traffic department have in connection with the maintenance, repairs, upkeep or operation of the ships?

A. They had none whatever.

Q. Now, the accounting department was under the head of Mr. Ford?

A. Yes, sir.

Q. Did he have an assistant?

A. Well, he had—he has a chief clerk, and the chief clerk I believe also has the title of assistant treasurer.

Q. Assistant treasurer?

A. Yes, sir.

Q. And approximately how much clerical help was there in that department?

A. Oh, probably nine or ten.

Q. Now, the purchasing and steward departments, were there any other department heads excepting the purchasing agent, Mr. Sprague, and

(Testimony of Melvin McKinstry.)

the assistant purchasing agent and port steward.  
Mr. Nelson?

A. No other subordinate but clerical help.

Q. Did either the accounting department or the purchasing department have anything to do with the upkeep, maintenance, repair or operation of the vessels? [629]

A. None whatever.

Q. Now, in the operating or transportation department, outside of Mr. Tracy who in May, 1935, was the general agent, what other sub-agents or sub-officials were there in that department?

A. Well, the agent on Pier 2, Mr. Truckey, reported to the general agent. Then he had a chief clerk, Mr. A. J. McLean, and of course the agent had quite a number of clerks—billing clerks and o.k. clerks.

Q. Did they have any stevedore foreman?

A. Yes, Mr. Dan Lowe was the stevedore foreman at that time.

Q. He was in that department, was he?

A. Yes. He reported direct to Mr. Tracy.

Q. And the wharfinger?

A. The wharfinger was Mr. Taite.

Q. Now, approximately how much clerical help did they have in that department?

A. Oh, I imagine at that time, I think, around between fifteen and twenty, probably. That can be easily obtainable.

Q. Yes. And in the maintenance and repair de-



(Testimony of Melvin McKinstry.)

partment you testified that Mr. Murphy was superintendent of maintenance and repair?

A. Yes.

Q. Did he have any sub-officials in his department?

A. Well, he had a chief clerk, Mr. Carter.

Q. Do you know what the extent of his clerical staff was?

A. And he had a secretary, and then a couple of clerks at West Seattle.

Q. Did Mr. Murphy have charge of the West Seattle yard? [630]

A. Yes, sir.

Q. Was there any limitation upon that?

A. None whatever, except in the case of major repairs—major improvements.

Q. Do you know how the West Seattle yard was divided into departments?

A. In a general way I do.

Q. What were they?

A. Well, we have a steel foreman; a carpenter foreman; a rigger foreman and a machinist foreman. That is all I recall right offhand.

Q. I would suggest a paint shop. Is that right?

A. Oh, yes, a paint shop. That is correct.

Q. Each one of those foremen had a crew of men working under them, did they?

A. Yes, sir.

Q. How did the actual working personnel of that yard vary—the West Seattle yard—in those various departments?

(Testimony of Melvin McKinstry.)

A. Well, it fluctuates, of course, with the seasons.

Q. I mean from a minimum to a maximum?

A. Well, since I have been connected with the company there have been as high as four hundred men working at West Seattle and there have been as low as fifty.

Q. Now, Mr. McKinstry, just how were your crews employed—through what sort and through what officials? Whose duty was it?

A. Well, Mr. F. B. Tracy—you refer to the licensed deck?

Q. I am referring to the whole crew, but I will start with the licensed deck.

A. The licensed deck personnel were employed by the general [631] agent.

Q. That would include the master, mates—

A. (Interposing) Pilots, the first, second and third mates. Mr. Tracy assigned the licensed deck personnel with the exception of the captain, and he obtained approval of the vice-president and general manager before assigning the captain.

Q. And in the absence of the vice-president whose approval would be obtained, if anybody's?

A. Mr. Tracy would talk it over with me, unless the captain had previously been approved for the same ship or a similar ship that he was going out on at the time.

Q. Do you know how the unlicensed deck personnel and seamen were employed?

(Testimony of Melvin McKinstry.)

A. Well, they are called from the union hall, and they may either be called by the first mate—probably in most cases by the first mate. In some cases the chief clerk in the operating department or transportation department may call them from there.

Q. And how about the licensed engine personnel?

A. The licensed engine personnel came under the complete jurisdiction of Mr. Murphy as superintendent of maintenance.

Q. And the unlicensed engine personnel?

A. Well, the unlicensed engine personnel was also under his jurisdiction. They likewise were called through the union hall by the first assistant, the chief, or in some cases probably Mr. Murphy called them there.

Q. Now, the selection of the steward's department.

A. Solely under Mr. C. O. Nelson as port steward. [632]

Q. Now, in selecting your licensed deck officers, does the captain, when selected and approved, have any voice in the selection of his subordinate officers—that is, the mate, second mate and third mate and pilot?

A. He would, yes, sir.

Q. Is that a customary practice?

A. Yes, sir.

(Testimony of Melvin McKinstry.)

Q. In what way and through what department do you handle the food and staple supplies?

A. Through the port steward.

Q. That would include linen and China——

A. (Interposing) And blankets.

Q. And kitchen utensils, and all?

A. Yes, sir.

Q. Hotel equipment?

A. That is right.

Q. And through what departments or upon whom was the responsibility imposed of supplying the engine room equipment and supplies?

A. Upon Mr. E. M. Murphy as superintendent of maintenance.

Q. And upon whom was imposed the duty of supplying deck supplies and navigating instruments, equipment, rope and all gear coming under the deck department?

A. Mr. E. M. Murphy, as superintendent of transportation, was in charge of deck supplies.

Q. Do you know as a practical matter the details of how he furnishes that equipment, whether it is upon open requisition or upon his own initiative?

A. Well——

Mr. Ryan: (Interposing) I object to that on the [633] ground that it is a conclusion of the witness with respect to what somebody else does that is outside of his department.

Mr. Bogle: I merely asked him if he knows.

(Testimony of Melvin McKinstry.)

A. Well, I know that it is furnished on requisitions.

Q. (By Mr. Bogle) Mr. McKinstry, upon whom, under the segregation of the duties here, and particularly of this letter, Petitioner's Exhibit 7, I think it is—you are familiar with that, sir, are you not?

A. Yes, sir.

Q. Upon whom devolved the duty of determining what repairs, replacements or renewals should be made to the deck or engine equipment?

A. Mr. E. M. Murphy. Item 2 in this letter, Petitioner's Exhibit 7, says that Mr. Murphy will be in charge of the repairs, maintenance and improvement to ships.

Q. Who would determine whether or not a vessel should go in drydock?

A. Mr. Murphy.

Q. Or that she should have her steering gear repaired?

A. Mr. Murphy.

Q. Or her compasses repaired?

A. Mr. Murphy.

Q. Or any of them?

A. Mr. Murphy.

Q. Now, Mr. McKinstry, Mr. Wilson has testified that he was not here in May of 1935. Were you in charge during his absence as assistant to the general manager in the executive department?

A. Yes, sir. [634]

(Testimony of Melvin McKinstry.)

Q. Now, do you remember the circumstances under which the "Denali" was placed on berth early in May of 1935?

A. I do.

Q. Will you just state the circumstances under which she was placed on berth.

A. Well, on May the 1st Mr. Baker, the traffic manager, directed a letter to the executive department advising or suggesting that the "Denali" be——

Mr. Ryan: (Interposing) I would ask that that writing be produced.

Mr. Bogle: Just let him answer.

Mr. Ryan: I object to the witness testifying to the contents of a letter without producing it.

Mr. Bogle: He is going to produce the letter as soon as he has finished his answer.

The Court: Well, the objection is sustained.

Mr. Bogle: Will you just read the answer, Mr. Reporter, as far as he gave it?

(Answer read as follows: "Well, on May the 1st, Mr. Baker, the traffic manager, directed a letter to the executive department, advising or suggesting that the "Denali" be——")

Mr. Bogle: Cut out all that about "advising or suggesting that the "Denali" be".

Q. (By Mr. Bogle) He directed a letter to the executive department?

A. Yes, sir.



(Testimony of Melvin McKinstry.)

The Court: You cannot state what the letter advised.

Q. (By Mr. Bogle) Have you a copy of that letter?

A. Yes, sir. [635]

Q. Will you produce it?

A. Yes, but it is a little torn (producing letter and handing letter to Mr. Bogle). [636]

Q. (By Mr. Bogle) Is this Petitioner's Exhibit No. 10 for Identification the letter to which you referred?

A. Yes, sir.

Q. And the initials at the bottom, "L.W.B." are Mr. Baker's initials?

A. His personal signature, as far as the initials are concerned.

Mr. Bogle: I will let counsel see this letter.

Mr. Ryan: Is this the original or a carbon?

Mr. Bogle: Just a minute; will you allow me to complete my examination?

Mr. Ryan: I thought you were going to offer it.

Mr. Bogle: No; I haven't offered it yet.

Q. (By Mr. Bogle) Mr. McKinstry, is this Petitioner's Exhibit No. 10 for Identification, the original letter from your office files of the executive department?

A. That is the original copy of the letter.

Q. Have you any other letter other than this in the executive department?

(Testimony of Melvin McKinstry.)

A. I do not think so. I looked for the original in the executive office and couldn't find it. Evidently it has been misplaced. But that was taken from the original traffic department file.

The Court: May I interrupt right there; the traffic department was the department whose head wrote the letter?

The Witness: That is right, Your Honor.

The Court: Was that a sub-office copy of the office copy?

The Witness: That is correct. [637]

The Court: And you couldn't find it in the office where you would expect to find the original to which that copy was to be traced?

The Witness: That is right; I couldn't find it.

The Court: You did look for it?

The Witness: I looked for it, yes, sir.

Q. (By Mr. Bogle) You recognize Mr. Baker's initials on it?

A. Yes, sir.

Mr. Bogle: I offer the letter in evidence.

Mr. Ryan: When the original letter like that would be received——

Mr. Bogle: (Interposing) Are you objecting to it? I am offering it in evidence.

Mr. Ryan: I am asking a question preliminary to making an objection.

Mr. Bogle: I think you had better get the consent of the Court. I would like to continue my examination.

(Testimony of Melvin McKinstry.)

The Court: You may ask him touching only the matter of the proper authentication of or admissibility of that document.

Q. (By Mr. Ryan) Would any notation be made on that original letter with respect to the authority, granted or not granted, in connection with its contents, or what was done, or would there be any other memoranda?

Mr. Bogle: I do not think that goes——

The Court: That objection is sustained. That is not a proper question in regard to the authentication.

Mr. Ryan: Wouldn't the original of this letter have on it endorsements or notations by the person to whom [638] it was addressed which would be in the nature of an order or O.K. or approval, or something of that sort?

The Witness: Not necessarily. It might be answered by another letter.

Mr. Ryan: Where is that other letter? I ask for the production of that.

The Court: You might find out first, before making such a demand, whether there was one or not. You haven't established yet whether there was one.

Mr. Ryan: Was there a reply to this letter?

The Witness: Yes, sir.

Mr. Ryan: Where is that reply?

The Witness: I have it in my pocket.

(Testimony of Melvin McKinstry.)

The Court: Have you any objection to the admission of that in evidence?

Mr. Ryan: Do you know whether the original of this letter has any notations on it that do not appear on this copy? Do you know of your own knowledge?

The Witness: In the absence of the letter, at this late date I couldn't say.

Mr. Ryan: I object to the letter.

The Court: Objection overruled. Petitioner's Exhibit No. 10 for Identification is admitted.

Mr. Ryan: An exception, please.

The Court: An exception noted and allowed.

(Letter received in evidence

Petitioner's Exhibit No. 10.)

Q. (By Mr. Bogle) Upon receipt of that letter, Petitioner's Exhibit No. 10—for instance, I might ask if that was received by you in Mr. Wilson's absence? [639]

A. Yes, sir.

Q. What was your next step in connection with the "Denali", as far as the "Denali" is concerned?

A. I first reviewed with Mr. Murphy if there was any question as to the condition of the vessel, its ability to be ready, if it were seaworthy and in condition to go to sea on the date specified in Mr. Baker's letter.

Q. Did you do that?

(Testimony of Melvin McKinstry.)

A. Yes, sir.

Q. What was the response from Mr. Murphy?

A. Well, after conferring with Mr. Murphy I then issued a letter over Mr. Wilson's signature, by my initials, to all of the department heads in the company. (Witness produces document.)

Q. I think you misunderstood the other question. What was Mr. Murphy's response to your inquiry as to whether the vessel was in condition and seaworthy?

A. That the vessels would be ready and seaworthy on approximately the dates specified in Mr. Baker's letters.

Mr. Ryan: Was that response in writing or oral?

The Witness: It would be oral.

Mr. Bogle: Will you mark this for identification?

Mr. Ryan: Are you offering it in evidence?

Mr. Bogle: You cannot offer it in evidence, Mr. Ryan, until you offer it. I am merely asking to have it marked.

(Letter marked for identification

Petitioner's Exhibit No. 11.)

Q. (By Mr. Bogle) I hand you a letter marked Petitioner's Exhibit No. 11 for Identification. The date of that letter is May 3rd? [640]

A. Yes.

Q. Mr. McKinstrey, would you have any authority to place these vessels on the berths unless Mr. Murphy had certified as to their condition?

A. No, sir, I would not.

(Testimony of Melvin McKinstry.)

Q. Without having first taken it up with him?

A. Not without first having taken it up with him.

Q. And following this letter of May 3rd, which covers several of your freighters, did you, or to your knowledge did the traffic department get out any further communications with reference to the sailing of the "Denali"?

A. To my knowledge, on May 1st the traffic department issued a circular showing a number of vessels that would sail during the month of May, including the "Denali".

Mr. Ryan: Mr. Bogle, you are not offering this in evidence?

Mr. Bogle: I am going to offer it in just a minute. Well, I will take that up a little later. I will offer Petitioner's Exhibit No. 11 for Identification in evidence, it being a letter from Mr. McKinstry to the different heads of departments, advising them of schedules of various freight vessels, including the "Denali".

The Court: Has it any relationship to Petitioner's Exhibit No. 10? Has Petitioner's Exhibit No. 11 for Identification any relationship to, or is it in response to or in reply to or otherwise connected with the subject matter of Petitioner's Exhibit No. 10?

The Witness: It is directly connected with it, Your Honor. [641]

The Court: Very well.

Mr. Ryan: May I ask, Mr. Bogle, to have a



(Testimony of Melvin McKinstrey.)

chance to read this? (Counsel examines document)

No objection.

The Court: Petitioner's Exhibit No. 11 admitted.

(Document received in evidence

Petitioner's Exhibit No. 11.)

Q. (By Mr. Bogle) Mr. McKinstrey, this Petitioner's Exhibit No. 10, I note, says, "I would suggest the following freighter schedule for the balance of the season"—specifying, among other things, the "Denali" for May 15th, and a subsequent sailing for August 24th. Now, in your letter of May 3rd addressed to department heads, it is definitely advised, is it not, that this is a tentative schedule?

A. It is a tentative schedule, approximate dates of freighters.

Q. And you haven't readily at hand just at the moment—well, here it is—I refer you to Petitioner's Exhibit No. 12 for Identification, and ask you if you know of your own knowledge what that is.

A. That is a notice that was issued by the traffic department, showing regular sailings, as well as what we term irregular sailings. The "Denali" would fall under the irregular sailings.

Q. To whom was this Petitioner's Exhibit No. 12 for Identification sent, and what was the purpose of it?

A. Well, it was sent primarily to keep our own agents in Alaska advised of tentative or fixed sailing dates. To what extent that was sent to shippers I am unable to say.

(Testimony of Melvin McKinstry.)

Mr. Ryan: No objection. [642]

The Court: Petitioner's Exhibit No. 12 admitted.

(Schedule of sailing received in evidence  
Petitioner's Exhibit No. 12.)

Q. (By Mr. Bogle) After the notice had been given of the approximate dates of the sailings of the vessels, their departures, what was the next contact with the "Denali", if any?—Your personal contact?

A. I would have no necessity for any personal contact.

Q. Did Mr. Tracy take up with you any question as to the crew's personnel?

A. I do not remember. It is possible that he did, but I do not remember if he did in this case.

Q. Prior to this date did you have any personal knowledge as to Capt. Healy's record and service with the company?

A. Except that I knew Capt. Healy had been with the company for many years.

Q. Had he or had he not previously been approved of by Mr. Wilson as master of freighters of this type?

A. He had; and he had served in that capacity.

Q. Previous to this voyage?

A. Yes, sir.

Q. Did you have any request or any word from Mr. Murphy with reference to the equipment of the vessel and its gear?

A. Not that I remember of.

(Testimony of Melvin McKinstry.)

Q. Compasses, steering gear or boilers?

A. No.

Q. Or any defect?

A. No. [643]

Q. At the time the vessel was placed on berth did you have any knowledge or notice of any defective or unseaworthy condition of the vessel, or any inefficiency of her crew?

A. No, sir.

Q. I forgot to ask you, Mr. McKinstrey; under whose jurisdiction do the pursers come?

A. The pursers report to the auditor—ashore, you mean, Mr. Bogle?

Q. No; the ships' pursers.

A. The pursers when ashore report to the auditor.

Q. And that is Mr. Ford?

A. Mr. Ford.

Q. Do you appoint them, or does he appoint them?

A. He does; yes.

Q. In placing a vessel for a certain fixture, does she have any schedule for way ports? For instance, the "Denali", according to this fixture, voyaged into Juneau, Cordova, Valdez, Metlakatla and Sitka, and various other ports—has she any schedule of arrival or departure date from any intermediate ports?

A. No, sir.

Q. After she leaves Seattle?

A. Absolutely, no.

(Testimony of Melvin McKinstry.)

Q. Are any instructions issued by you, in the absence of Mr. Wilson, or, to your knowledge by Mr. Wilson while he is here, to the masters, specifying the routes to be taken by the freighters?

A. No, sir.

Q. Did you issue any such instructions to Capt. Healy in the case of this particular sailing? [644]

A. No, sir. That was up to Capt. Healy.

Q. Did you have any previous acquaintance or knowledge as to the ability of Capt. Oberg, the pilot selected and placed aboard the "Denali" on this trip?

A. No. Not of my own knowledge.

Q. Did you have his record?

A. Now, you mean in our office?

Q. Yes.

A. Well, I cannot answer that, Mr. Bogle. I don't remember.

Q. Do you know how long he had been with the company?

A. No; I cannot answer that, either.

Q. He was selected by Mr. Tracy, wasn't he?

A. Mr. Tracy. Except that I know that he has had many years of experience on Alaskan ships.

Mr. Bogle: I believe that is all.

The Court: You may cross-examine.

(Testimony of Melvin McKinstry.)

Cross Examination

By Mr. Ryan:

Q. This Petitioner's Exhibit No. 11 evidently contemplates that the "Denali" should be sailing on regular schedules in the summer; isn't that so?

A. Those are approximate dates.

Q. The word "approximate" is not there, is it?

A. Well, that is in the nature of the business, and, as we understand it, approximate for freighters.

Q. There is nothing in that letter to support that inference or conjecture about "approximate", is there? I show it to you.

A. Well, the word "approximate" is not in there. [645]

Q. And that is a list of the regular sailing dates for the "Denali" throughout the summer, isn't it?

A. Not regular. That is approximate.

Q. I know, but the dates are given.

A. The dates are never——

Q. (Interposing) Right straight through, up until August 24th, including August 24th?

A. That is right.

Q. That is a regular service, then, up until August 24th, isn't it?

A. Not regular service, as we interpret it.

Q. The mere fact that she is sailing at certain regular dates that are specified is not regular service, in your opinion; is that so?

Mr. Bogle: That is a little argumentative, if the Court please. He has given his testimony.

The Court: Try to avoid arguing with the witness.

Q. Before approving the taking of the "Denali" out of the laid-up fleet, in May, 1935, and sending her to sea with the Claimants' cargo, and with passengers on board, did you make any provision for any examination of her compasses, to ascertain whether they were in good and safe condition for her to proceed to sea?

A. I did not.

Q. Do you know of anybody who did, of your own knowledge, make any such provision?

A. I do not.

Q. Whose duty was it to do that, in your company?

A. That fell under Mr. E. M. Murphy, as superintendent of maintenance. [646]

Q. Do you know of any communication that was ever sent to Mr. Murphy, other than this mimeographed letter, Petitioner's Exhibit No. 7, which would indicate that Mr. Murphy was to have anything to do with the examination of the compasses of the ship, to see whether the ship was in safe condition to go to sea?

A. Will you read that question? (Last question read)

I do not know of any such communication.

The Court: At this point the Court will be adjourned until tomorrow at 10:00 o'clock A. M., and these proceedings continued until that time. If



Testimony of Melvin McKinstry.)

ounsel will consent the Court will direct the Clerk  
o reconstruct that torn letter, which I believe is  
Petitioner's Exhibit No. 10.

Mr. Ryan: I consent to that.

Mr. Bogle: Yes, Your Honor.

(Whereupon an adjournment was taken  
until October 20, 1937, at the hour of 10:00  
o'clock A. M.) [647]

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October 20, 1937,  
10:00 O'clock A. M.

The Court: You may proceed with the case on  
rial. As I understood, there was for disposition  
ome question relating to a notice to produce, or  
ubpoena duces tecum.

Mr. Bogle: Yes.

The Court: And perhaps on the part of the  
laimant United States of America a motion for  
iscovery, was there not?

Mr. Bogle: That is right.

Mr. Summers: If the Court please, I am not sure  
hat I caught exactly the remarks of the Court, but  
he situation is this, that Mr. Pellegrini advised me  
n the telephone last evening that due to the re-  
uirements of the Grand Jury in Tacoma he would  
e unable to attend this hearing until 2:00 o'clock  
his afternoon. It is, of course, within Your Honor's  
iscretion, but it would be rather embarrassing, of  
course, to the Claimants not to have the matter of

discovery and demand settled. Mr. Dennis has acquiesced in my suggestion that for the convenience of the Court in the matter he would permit me to present the matter for Mr. Pellegrini.

The Court: It would seem to me that in view of the experience yesterday of there having occurred one or two instances where it was inconvenient to the progress of the proceedings, that the matter ought to be disposed of, and that it would be desirable that it be disposed of now.

Mr. Summers: I call Your Honor's attention first to the Government's motion or application for discovery, served [648] and filed after the case was at issue, but prior to the trial. The motion for discovery is not, as Mr. Bogle indicated to the Court, through apparent unfamiliarity with the application—it is not in whole similar to the application made by the other Claimants.

Because the subject matter of inquiry is naturally the same, it does bear similarity, but the documents sought by the application for discovery are not in all respects the same. For instance, in some particulars the items sought are not records as far back as 1930. They are confined in the main to more recent voyages of the "Denali" than that.

The Court: May I interrupt you for a moment?

Mr. Summers: Yes, Your Honor.

The Court: Referring to the application of the United States for discovery of documents, and the demand by the United States for the production of documents at trial, does the latter include all of the

subject matter referred to in the application for discovery of that Claimant?

Mr. Summers: Well, I did not prepare the application for discovery, and I would not be able to say that everything which is included in the demand for production is also covered by the application for discovery. I think there are some matters which are within the application for discovery which, perhaps might not be properly within the demand for production, because I think there is sought certain information which would be considered, perhaps, as not of a documentary nature, that might not come within the demand. I think the only way that can be definitely ascertained is by a careful comparison, Your Honor. [649]

Preliminarily, I wish to read to the Court a decision which bears upon the right of discovery. This decision is found in 6 Fed. 2nd, at page 89, written by Judge Hutcheson, now of the Fifth Circuit Court of Appeals. It bears upon the right as a whole, and the discretion and power of the Court in exercising the discretionary power with respect to a discovery of the kind that is asked here. I shall not read the entire opinion, but the Court said: “—the following order was entered, ex parte and as of course:” The Court now quotes the order that was entered in this case:

“Upon the application of Mr. John R. Palmer, one of the proctors for the above-named respondent, and upon referring to the record herein from which it appears that issue

has now been joined between the parties: It is ordered that the above-named libelant shall within fifteen days from the service of this order make discovery upon oath of all letters, paper writings, books of account, policies of insurance, bills, receipts, vouchers and any and all other documents, of whatever nature or kind, which are or have been in its possession, control, or power, pertaining or in any way relative to the matters or questions in issue in these proceedings.'

The libelants in the cases, with leave of the court, appeared, seeking to have the order set aside. Upon hearing of the matter, argument was had, and full and comprehensive briefs were filed, and the question involved was interestingly and able discussed.

The contention of the libelants is that the order of the court requiring a disclosure by libelants [650] of all papers, letters, documents, telegrams, policies of insurance, bills accounts, etc., was beyond the power of the court to make; that it operates to give the applicant for the order fishing rights on libelants' premises, which the law does not accord them; that it was contrary to the established and recognized procedure for discovery, which libelants contend rule 32 should be construed as merely declaratory of."

Then the Court quotes from certain opinions of Justice Holmes and Justice Brandeis. Thereafter the Court says:

“Holding these views of the growth of the law, and believing as I do that the narrow limits placed upon discovery by the adjudication of the courts both of equity and admiralty in the past have not been conducive to justice, but have smacked much of legalistic precision, I would be inclined, if I were put to it, to seize upon the opportunity given by rule 32 and legislate judicially in aid of its provisions.

Raised, as I have been, in a blended jurisdiction, which does not recognize the equity practice of bill of discovery, but gives to each person the right in *ex parte* interrogatories to search his adversary as drastically as the art of cross-examination can devise, I am not much impressed with the refinements upon the practice of discovery worked on it by courts operating in jurisdictions where the full right of disclosure provided by our *ex parte* practices does not exist. [651] I did not, however, put to the necessity of ordinary judicial legislation, for in the enactment of this rule the Supreme Court of the United States has exercised legislative power of a broader character than that which I have been discussing, and in the exercise of that power of rule making has in a clean-cut and vigorous way, in language simply and easy of understanding, precise and not difficult of ap-



plication, furnished a guide and directed a procedure.

Whether, as counsel for respondents contend, the rule was imported directly from the English practice, and there was therefore imported with it the English decisions under it as the binding rule of construction, is not necessary for me to decide. Certainly they are legitimate and persuasive sources of interpretation, and coinciding, as they do, with my own interpretation of the rule, they strengthen and enforce my view that the rule means what it says, and should be applied in accordance with its terms, as a clean, new rule, not barnaced with old precedents drawn from equity practices, established when a suit in chancery was a fearful and a wonderful thing in its complications, and when counsel had always, like Agag, to go 'stepping delicately.'

Nor does the rule, as properly construed and applied, deprive a litigant of any fair and proper right. Of course, if litigation is to be conducted upon the basis of a rough and tumble with catch-as-catch-can rules, not excluding even biting and gouging, the observance of the practice invoked by respon- [652] dents will greatly hamper it, as it will take from it its chief tactical advantage, that of surprise, and thus tend to prevent the miscarriage of justice through concealment of the facts.

If litigation is conducted, as indeed it ought to be, as an effort to develop, fully, fairly, and



clearly the whole facts of a cause, no one ought to be injured by a motion of this kind since the rule makes full provision after discovery, for protection against disclosure and production of any document which ought not in fairness to be disclosed. It is my view, then, that the order of discovery heretofore entered was properly entered, and that it should be complied with."

That was the Court in "The Belfast Maru", as I have said, in 6 Fed. 2nd, page 89. That case was cited with approval in two later cases, one in 12 Fed. 2nd, at 317, and again in 37 Fed. 2nd, at page 599,

Going back to the Rule that the Court had under discussion, I remind the Court that it says that the litigant is entitled to any documents which are or have been in the possession or power of the other party relating to any matter or question in issue, and that the Court might order the production by any party, his agent or representative, on oath, such of the documents in its power or possession. I emphasize that because of the fact that as disclosed to the Court when the matter of discovery was being presented by other Claimants certain items, to-wit, the original data of independent compass adjusters sought by the application for dis- [653] covery is, at least so far as we know, not in the possession of the petitioner itself, but in the possession of its agents employed independently for the purpose of compass adjustment.

The opinion, it seems to me, not only supports the application for discovery made by the Government with respect to specific documents, but I think it goes so far as to give this Court the precedent for allowing an application for discovery without specification of any documents at all, excepting those documents which are material and relevant to the issues created by the pleadings in the cause.

In other words, I am suggesting that because in argument in behalf of the Petitioner when a similar application was presented by other Claimants counsel for Petitioner suggested that the application was a mere fishing expedition, except to the extent that it specified certain particular documents. That, I think, without reading the particular items, is the Government's situation in respect to the application for discovery.

The Court: Well, if the subject matter can be reached as well by the demand for production of the documents the Court feels that since this application for discovery of documents made by the Claimant United States of America was not brought to the attention of the Court until at the time when the case was called for trial, that is, yesterday morning, that a ruling upon the demand for production ought to cover and dispose of this situation, if the subject matter of such demand is co-extensive with that mentioned in the application for discovery.

[654]

Mr. Summers: I have this suggestion, Your Honor, with respect to the possibility—within Your

Honor's discretion, of course, of the difference in the rights that there might be resultant from an order granting the application for discovery, and one allowing the demand, or approving the demand for production. I think the Court would have the right, and perhaps it would almost approach being a duty, if the discovery were allowed, in harmony with the spirit of the rule, to permit examination of documents covered by the application for discovery entirely apart from the testimony of any particular witness present on the stand. In other words, the application for discovery, as I conceive, at least, is a little broader in that right to which the party making the application would have respecting the use of documents.

The Court: Well, if the demand for the production of documents is required by the Court to be complied with, doesn't the applicant making such demand have substantially the same rights of inspection?

Mr. Summers: I think that is true, Your Honor, except to this extent; the discovery might be granted and the documents examined in advance of the presence of any witness on the stand. That is the only real point I was making.

Mr. Long: I am not just certain, if Your Honor please—do I understand that the Court's suggestion that the matter of the Government's application for discovery is denied?

The Court: No; I have not ruled. [655]

Mr. Long: I just was not sure.

The Court: I have not ruled upon the matter yet. My inquiry was to Mr. Summers, that the application for discovery made by the United States, having come so late, having been brought to the attention of the Court at the commencement of the trial, and not before, whether or not the matter could not be effectively dealt with by consideration only of the demand for the production, and especially if the demand for production goes to the same matters, records, etc., as those referred to in the application for discovery.

Mr. Long: Without reviewing and comparing each in detail, Your Honor, I think it is safe to say that the matters covered in the application and in the demand are substantially the same. My judgment, from an examination of them rather hurriedly, is that they are practically identical, in substance.

Now, if Your Honor please, referring just briefly to the case cited by counsel, I am surprised that he did not call Your Honor's attention to the only authority for this decision, two dissenting opinions in other cases. This District Judge apparently disagreed with the decisions of higher authorities, the Circuit Court of Appeals and the Supreme Court of the United States.

The Court: Made since this Rule 32?

Mr. Long: This rule, if Your Honor please, that counsel cited to Your Honor, was with reference to a case not in limitation. It was an entirely different set of circumstances, and an entirely different ap-

plication of that rule. District Judge Hutcheson places and bases [656] his opinion upon two dissenting opinions, not the majority opinions of the Supreme Court of the United States.

The file will most clearly demonstrate here that these Claimants—I say these Claimants, the Claimant Pacific Coast Coal Company, et al., and the United States of America—in their previous pleadings have been absolutely identical, up to the time of this application for discovery. One is a copy of the other. Obviously, counsel have worked in very close harmony and association.

Here a few days ago the Claimant Pacific Coast Coal Company presented to Your Honor an application for discovery, a portion of which was granted and a portion of which was denied. That portion granted pertained to the records of the steamer "Denali" for the active part of the voyage upon which she stranded. Photostatic copies have been taken by the Claimants of those documents and are now in their possession. The remainder of the application for discovery was denied.

The matter was argued at some length at that time, and now the Government, as Claimant, makes its application for discovery, covering the matters which Your Honor denied in connection with the application of the Pacific Coast Coal Company. They ask for a great many of the identical things, not only in substance, but in exact language. They go some distance farther and ask, for example, for communications—



The Court: What are you referring to now?

Mr. Long: I am now referring to the Government's application [657] for discovery.

The Court: What item of it?

Mr. Long: Items 6, 7 and 8. They were contained in the Claimant Pacific Coast Coal Company's application for discovery heard by Your Honor a few days ago and denied.

Nos. 9 and 10 are new, in that they ask for copies of reports and other confidential information given by the master of the steamship "Denali" to the underwriters of the Petitioner, and their representatives, and Government Boards. Obviously that information can have no possible bearing on any burden which the Claimant has here assumed to carry in this case.

Your Honor will recall, and I will sketch briefly again, the substance of the decisions which we presented a few days ago in connection with the Pacific Coast Coal Company application. Admiralty Rule No. 32 was construed in a decision by Judge Neterer. The cases bearing upon the applicability of Admiralty Rule No. 31 pertain to interrogatories, which are clear and well defined, that is, the propounding party must propound interrogatories, the answer to which would be material to its burden or its defense, or its affirmative defense, whichever the case may be, and fishing into the opponent's evidence, or an examination helter-skelter of its books, what they might choose to discover, if anything, is not permitted.



Judge Neterer, in construing Admiralty Rule No. 32—and I believe it is really the only decision in the books, and certainly the only one in this district that I have knowledge of—Judge Neterer said that Admiralty Rule [658] No. 32 with relation to the production of documents is covered by the same applicable rights as Rule 31; that is, the documents sought must be material to the issue or the burden which the seeker must bear in the trial of the case. They cannot fish into the evidence of the other party. I am not going to review those decisions again. I think Your Honor has that rule rather clearly in mind.

This application, aside from the matters that I have just mentioned to your Honor, covered items which Your Honor denied in the Pacific Coast Coal Company bill of discovery, and contained other requests for communications between the underwriters of the Petitioner and its representatives. That would have no bearing on any issue before this Court which the Claimants have the burden of sustaining. [659]

With reference to the matter of all deck and engine log books of the Steamship "Denali", that application has been complied with and they have been furnished. We have no objection whatsoever to furnish copies of those to the Government. I assume that counsel for the claimant Pacific Coast Coal Company has them. They are photostatic copies. There are two copies of them.

Now, Item 2, all bell books of the Steamship "Denali", the same condition applies to those.

Now, the items 3, 4, 5, 6, 7 and 8, those are covered by the Pacific Coast Coal Company's demand, and that demand was denied by Your Honor the other day.

Now, items 9 and 10 refer to all communications, reports, or copies thereof, made by and between the master, pilot and officers of the Steamship "Denali", relative to her stranding, and that has reference to reports with underwriters or other representatives, which would mean counsel. Now, that is obviously privileged under many decisions, and certainly there is nothing shown here that these are matters that are material to the issues now before Your Honor. So much for the application for discovery of documents.

Mr. Summers: I have presented solely the Government's application for discovery, and I wish to make a few remarks in reply to Mr. Long. Mr. Ryan will present the demand for production.

Mr. Long: Very well.

Mr. Summers: Very briefly, Your Honor, I have this to say, that I am unaware of any decisions of the Supreme Court of the United States prior to this decision [660] from which I read construing Rule 32 which was promulgated in 1921.

The Court: That is Rule 32, is it not?

Mr. Summers: Yes, but I am speaking of the year when it became effective. The rule became

effective in 1921, and this decision from which I have read was rendered in 1925.

Counsel would seem to suggest by his remarks that this opinion is out of harmony—that same rule—by some decision of the Supreme Court of the United States construing that rule. I know of no such situation. It is true that the Judge who rendered this opinion did refer to the liberal and progressive opinions in which Justice Brandeis in some cases and Justice Holmes have been dissenting, where they have been talking about liberal construction, but I do not understand that there is anything in the case suggestive, or in the authorities suggestive that that is out of harmony with any of the Supreme Court of the United States decisions.

Counsel made one or two statements. I did not intend to refer to the items in this application for discovery, but counsel made one or two statements which seem to make it necessary that I do.

Counsel says that the log books asked by the Government in its application for discovery have been furnished, which is not true. Item 1 says, "All deck and engine log books of the Steamship "Denali" for the year 1934." Those have not been furnished. It is true that they were denied to the claimant Pacific Coast Coal Company, but this application is by the Government. I know [661] of no reason why the Government is foreclosed because other claimants made an application upon which Your Honor adversely ruled.

The second item asks for all bell books of the Steamship "Denali" for the year 1934, in other words, for the voyages last preceding this one voyage. That is all that it amounts to, because the vessel was laid up in the wintertime.

Counsel has said that the Government has asked for certain reports which are privileged. There is no request here for any report or communication that was made to the petitioner's attorneys. The reports and communications sought are between officers or agents or representatives of the steamship company with respect to the ship and the company itself. The Courts have held that those are not privileged. They are only privileged when such communications are made long after the event in connection with the preparation for trial. But we are not asking for any such trial records, or memoranda, or data. We are asking for those reports and those reports made by the officers or agents of this company to the company with reference to the disaster.

I think the other items speak for themselves, but, as counsel has indicated already, some of the items in this application for discovery are similar. Most of them are much more limited than those in the application made by the other claimants. Some of them are dissimilar. It does not seem to me that merely because the Government has in the main acquiesced in the pleadings that have been filed by the other claimants, that they are deprived of the [662] privilege and right of standing on their own

feet in some particular where they do not agree with the action taken by the claimants.

The Court: I would like to rule upon this application for discovery now. The application for discovery previously heard by the Court last week concerned the application by the Pacific Coast Coal Company and others, did it not?

Mr. Summers: Yes.

Mr. Long: Yes.

The Court: As the Court recalls it that application was brought to the attention of the Court and was heard by the Court, and a ruling made thereon not in excess of ten days before the trial. This application of the claimant, United States of America, for discovery of documents was filed on October 18th and was called to the attention of the Court at the beginning of the trial on October 19th, which was yesterday. A circumstance which affected the ruling of the Court on the application for discovery made by the Pacific Coast Coal Company was the shortness of time before the trial which the petitioner would have to comply with any order that the Court was called upon to make or was asked to make touching that application for discovery made by the Pacific Coast Coal Company.

That same circumstance is involved here in the consideration of this application for discovery made by the United States of America.

That situation, it seems to me, should be considered by the Court, and was considered by the Court [663] previously, and the Court had in mind,



in ruling on the application for discovery previously made, that no prejudice should be done thereby to any further or additional right which the claimant might have to production of items or records to be acted upon by the petitioner and any order relating to demand for production to be complied with by the petitioner, The Alaska Steamship Company, during the course of the trial.

I think that the ruling of the Court at this time on this application for discovery should be, and is that this particular application of the United States of America for discovery should be denied in whole, with the privilege, however, and right of the United States to have the benefit of any discovery which the Court has previously ordered at the request and upon the application of the other claimants, among whom is the Pacific Coast Coal Company.

And so the order of the Court now is that this application of the United States for discovery is denied upon that condition, and this denial of this application for discovery, just as the Court said in connection with the ruling made upon the application of the Pacific Coast Coal Company's discovery, is without prejudice to the right of claimants to demand production of documents at the trial, or to subpoena those documents.

The Court will now consider what counsel may have to say to the Court with respect to the demands for the production of documents at the trial



made by the Pacific Coast Coal Company and by the United States of America.

Mr. Long: They are identical, are they not, Mr. Ryan? [664]

Mr. Ryan: I have not compared them, but I believe so.

In *General Motors Acceptance Corporation versus American Insurance Company*, 50 Federal, Second, 803, the Circuit Court of Appeals for the Fifth Circuit had a situation quite analogous to the present one, where an effort along one line to obtain documents had been unsuccessful, for some technical reason, and application was then made by a call for production of documents at the trial, just exactly what we are doing here.

The Circuit Court of Appeals stated the rule as follows—and this is the rule that they applied in the case notwithstanding the previous denial on the technical ground of the other application—“It is usually sufficient to call for the production of a relevant document admittedly in the possession of the other side at any time during the trial if the notice is reasonable”. Now, that is the rule, and that is what I am applying for now.

So now what need be shown is that we have made a call for the production, which is in writing, and has been served. The notice is reasonable; that it is made during the trial; that the documents are in the possession of the other side, and that they are relevant, and that they are not privileged, and I will show each one of those. Has Your Honor got the notice before you?

The Court: The demand?

Mr. Ryan: Yes.

The Court: Yes, I have the demand for production of documents at the trial.

Mr. Ryan: That is it. [665]

The Court: Made by the claimant Pacific Coast Coal Company, et al, and also that same demand made by the United States of America.

Mr. Ryan: That is it. All right. Now, there are 22 individual demands. The first demand is for the——

The Court: (Interposing) Whose demand is that?

Mr. Ryan: I think they are both substantially the same. I will take the Pacific Coast Coal Company's first.

The Court: I think the first page of them are identical.

Mr. Long: I think they are substantially the same throughout, Your Honor.

The Court: Yes, I am inclined to think so. On the second page they seem to be word for word.

Mr. Long: They are identical.

The Court: On the third page I am inclined to think they are word for word the same—they certainly have the same number of items.

Mr. Ryan: All right. Now, the first demand is for the production of the "Denali's" deck logs, both rough and smooth, for the period beginning 1932 up to and including May 19, 1935. Now, as to that item those log books are required by a statute of the United States to be kept and recorded, and the pur-

pose of that requirement is for the protection and benefit of the cargo and passengers and other persons interested on the ship, other than the ship owner, so that there shall be a contemporaneous official record. Those log books were kept by officers of the petitioner. They are therefore, presumably—and the [666] testimony of the vice-president and operating manager yesterday was that those log books were turned in by the master of the vessel to the home office of the company here in Seattle. So, on that showing—we show they are in the possession of the petitioner.

Now, are they relevant? Now, what we are interested in here is the good condition of the ship at the time she was ordered to sea and sailed—or sent to sea by this petitioner here from Seattle—right here in the home office. Now, the condition of the ship at that time will be disclosed by records of the ship; by contemporaneously recorded events occurring on board the ship during a reasonable period preceding the date on which he started loading her cargo on his voyage, which was May 13th. It has always been the practice in the admiralty to require the production of all relevant records of the ship owner for a reasonable period preceding the beginning of the voyage, by which I mean the time the ship starts to load her cargo on the voyage which is involved, if the question involved relates to the fitness of that vessel at that time.

Now, we have asked here for the log books beginning in 1932 and running up to 1935.

Now, on the question of relevancy the evidence will show—no, the answers to the interrogatories for the petitioner already in the record show that these compasses were last adjusted in June, 1933—was it June or July?

Mr. Long: July.

Mr. Ryan: July, 1933. [667]

Mr. Long: July 24.

Mr. Ryan: That is the last record we have from a competent person regarding the condition of the compasses, and it relates only to that time. The petitioner has admitted in its interrogatories that there was no examination or adjustment by a compass adjuster after that time.

Now, as I said to Your Honor yesterday, the question of compasses is going to be vital in this case. And the question of charts is going to be vital—what the conditions were. So in the absence of an inspection record by a competent compass adjuster just before the sailing of this vessel—with in a reasonable time before that—we have to spell out by evidence what the condition of that compass was, and we have to do that by the records, including the log books relating to the compass—relating to the steering of the vessel—relating to her operation during the period since, on the issues as now stated and on the evidence as now presented, the last definite knowledge that was obtained by anybody who was competent with reference to the condition of the compasses and with reference to the charts that were on board, and with

reference to what had happened afterwards on the vessel during the period before the sailing on this voyage and since the last adjustment.

Now, on the question of privilege. Log books are obviously not privileged. I do not think that I need to argue that.

So I have proved all the elements with reference to the first item.

Now, the second item of the demand for production [668] of documents at trial is the "Denali's" engine logs, both rough and smooth, for the period beginning 1932 up to and including May 19, 1935. The same argument applies to that. Now, it is true—both that and the first run to 1932 instead of beginning in July of 1933 when the compasses were last adjusted, but I assure Your Honor that during the course of this trial it will be ascertained that there are circumstances in connection with this vessel shortly preceding that, running back to 1932, that would make it relevant.

Now, mind you, all we have got to show is that it is relevant—not the degree of relevancy, but just that it is relevant. We are working here without the possession of the documents. They have the documents. They have these things which are relevant to the case. The degree of their relevancy will be determined when we get them and they are before the Court, and the Court can then pass upon any questions involved. But the log books are certainly vital in the case, and all that has been produced or discovered so far are some logs beginning



after the cargo was all loaded and running from May 16th to May 19th—May 16, 17, 18 and part of the 19th—a few hours on the 19th. That is all before the Court. Why, the Court could not possibly have all the relevant facts with reference to the condition of that vessel merely on that, and anyway the Supreme Court of the United States has repeatedly decided that the voyage starts when the cargo is started loading. And with reference to the records of the ship and her condition preceding the date on which we are trying to spell out what her actual condition was, they are vital and [669] necessary in this case to an adequate finding with reference to her condition at that time.

Now, the third item is, "The 'Denali's' port logs, for the period beginning 1932, up to and including May 19, 1935".

Oh, yes, I might add as to the first two items,—We are dealing here with a peculiar ship and a peculiar steamship. Ordinarily you might say, "Well, go back to a year before this disaster. That ought to be enough for the production of log books". But, mind you, this ship on the evidence already before the Court was laid up for at least seven months of the year just preceding, so that there would not be any operating log books. So, on the principle taking it for a year preceding—a year's operation of the vessel preceding the date of the sailing of the vessel—on that kind of a



theory here is a ship operating three months in a year, and you go back for four years before in order to get one full year of operating of this vessel. But we do not ask for that. We only ask to go back to and including the year 1932.

Now, the third item, "The 'Denali's' port logs, for the period beginning 1932, up to and including May 19, 1935". Now such logs have yet been produced by the other side. Such port logs are kept by some companies. If they are in existence, they should be produced. A port log will be a log book kept by the vessel while she is in port and not actually on the voyage.

Now, in view of the testimony yesterday by Mr. Wilson that they did not have any master assigned to the vessel, and she was just lying out there in the one yard, [670] with a lot of others for all those months, probably they did not keep a port log. At least they should be required to say whether they did or did not, and if it is in their possession they should produce it, because it is relevant.

Mr. Long: Well, it is on file here, and it has been on file here for four days—an affidavit to that effect.

Mr. Ryan: Now, the fourth item, "The 'Denali's' bell books for the period beginning 1932, up to and including May 19, 1935".

The same argument with reference to the first two items applied to that. The bell book is simply another log book referring to the bells given to the engine room, and back and forth, and other

items of importance occurring during that period. In other words, they make a set, the deck logs, the engine logs and the bell books.

Now, the fifth item is, "All records, requisitions, reports, and so forth, relative to repairs, renewals, or replacements for the Steamship 'Denali', and all records of the same having been furnished and performed upon or for the said steamship (inclusive of labor and material sheets), for the period beginning with the year 1932 and ending May 19, 1935". Now, the same line of argument applies there. If there were before the Court some specific evidence that was of substantial weight that a competent compass adjuster had examined the compass just before the sailing; that a competent person had determined what charts she had, and that she had a full supply, and that she had a full supply of all the ordinary aids to navigation, and that in all other respects she was seaworthy, and those [671] reports were dated just at the date of the sailing, or just as she was beginning loading cargo on this voyage, that would be one thing, but we do not have that. All that they have produced so far has been the steamboat inspection certificate, and the law of the United States and the regulations issued under and in accordance with it show that the steamboat inspectors in their inspection certificate have nothing in the world to do with the competency or the good condition of these items that I have been mentioning, with other material items, and make no examination or adjustment of

mem. And the testimony yesterday, and I think it is decisive, of the operating manager and the vice-president is that under ordinary practice it is done by shore compass adjusters here in Seattle.

Now, there is a request here, "All records, requisitions, reports, and so forth, relative to repairs, renewals or replacements for the Steamship 'Denali'." Now, they are forced to the position of having to call Mr. Murphy, their own superintendent of maintenance and repair, who was referred to yesterday. They are committed to that man and his final determination of all these matters, he being the ultra ego of the company on all those things, requisitions, reports and that sort of thing, which are bound to be important in this case, all those things coming to him. The question is primarily as to those, are they relevant, and the records and requisitions and reports relative to repairs, renewals or replacements, and all that sort of thing, are certainly relevant as to the sea worthiness of the ship, and the time reasonable for the time in which they are asked, and we ask for them for a reasonable [672] period preceding this voyage.

Now, 6, "All azimuth books or records, or copies hereof if original be unavailable of or from the Steamship 'Denali' for the period beginning with the year 1930 up to and including May 19, 1935".

Those azimuth books, it is already shown by Petitioner's interrogatories that they were kept. They obviously bear on the condition of the ship and her navigating equipment and compasses, and all that

sort of thing. They are in the same category as log books.

Also, 7, "All compasses, deviation records or cards". That is in the same category exactly as the log books.

Now, 8, "Construction plans of the Steamship 'Denali'." Now that is——

The Court: (Interposing) Have you ever seen a case authorizing that where request was made relating to the construction plans of a steamship?

Mr. Ryan: Oh, yes, it has been repeatedly granted. All you have got to show is that they have them in their possession. If they deny that they are in their possession, then you either have to show that they are in their possession, or whoever has them, and you have to go to whoever has possession of them and get them. Yes, there have been repeatedly cases of that sort.

The Court: What is the materiality or relevancy of that, "Construction plans of the Steamship 'Denali' ".?

Mr. Ryan: The answers to interrogatories filed by the petitioner show that this vessel loaded an iron cargo in large part and gives roughly by their kind of [673] designation the stowage of it. Now, in order to understand that you have to have the plans of the ship to see where that iron was.

Now, I think it is common knowledge—Your Honor can take judicial knowledge of it that iron has an effect on compasses, and it all bears—in order to understand the interrogatories that the

petitioner has already filed you have to have the plans of the ship.

Now, the plans of a ship, they are primarily just a view—I mean, the construction plans of a ship. You do not get the little individual ones that they use around in the workshop of the shipyard. It is a little set of plans that the shipowner always keeps, and he usually gives it to the master of his vessel, and as I say that request has been repeatedly granted. [674]

Also there is testimony here—I am not sure that it is in the record yet, or in the interrogatories and answers, but it will be, at any rate—that there was stowage of cargo here in the well deck. And that as a result of that the booms had to be adjusted in an extraordinary manner, and that sort of thing. In order to understand all that you have to have the construction plans to see where those booms are, and how it is relevant, and so on, because the stowage of this cargo in the well deck becomes very important. It is not as relevant, of course, as the log books, but it is relevant—we will put it precisely on this ground—it is relevant to the answers which the Petitioner filed in this case as to this very voyage. Now, No. 9, “All general instructions in effect in May, 1935, prior to May 19, 1935, issued to masters, pilots and navigating officers.” That certainly is vitally relevant on the question of the knowledge of the shipowner, and on what the set-up or organization was that the shipowners were setting up here, what practice they were establishing. what



organization, in connection with the maintenance and repair and upkeep and operation of the ship. I do not think I need argue that further. I mean that is obviously something that emanates from here. They produced one of them themselves yesterday that was relevant, and we are just asking for the rest of them.

Then No. 10: All specific instructions in effect during May, 1935, prior to May 19, 1935, issued to the master, pilot and navigating officers of the steamship [675] "Denali". That just brings that last one down to the steamship "Denali".

I want to show why that preceding one is relevant. Suppose they issued instructions to all the ships except the master of the "Denali", but didn't issue the instructions to the "Denali"; that would be relevant to show that, and that is what those instructions to the other masters would show, as compared to the instructions issued to the master of the "Denali". If they are the same that will appear, and it will be a mere duplication, and there will be no prejudice to the petitioner in that respect.

The eleventh item: "All instructions as to the maintenance of vessels in general or the steamship "Denali" in particular, effective as of May 16, 1935". I think that is obviously relevant.

No. 12: "All charts on board the steamship "Denali" upon the voyage upon which she stranded, particularly that chart in use at the time of stranding." Nothing could be more important than that, just what charts were on board the steamship



“Denali”, what were the numbers of those charts, were they all the charts the Government issued in reference to that area, and the dates on which those charts were supplied to the “Denali”. That is of the very essence of seaworthiness, and that is the duty of the shipowner, the Petitioner—next to the compasses, that is the most important point in the case.

Item No. 13: “Any and all corporate by-laws, general instructions, letters or other writings granting, [676] limiting or outlining the authorities and duties of the several executive officers and representatives of the Alaska Steamship Company in effect during May, 1935, on and before the 16th of that month.”

Your Honor heard the testimony of Mr. Wilson, and Your Honor heard the testimony of Mr. McKinstry. Mr. Wilson admitted that there had been some writings with reference to the duties of the president, and that sort of thing, and the other officers. What we are asking for there are the writings, the records of the company, showing the set-up. I think we are entitled to that, independently of his testimony, but in view of his testimony certainly we are entitled to that. It is very relevant for the purpose of cross-examining him and Mr. McKinstry.

No. 14: “Manifest of cargo on the voyage upon which the “Denali” stranded.” Well, that is obviously material.

No. 15: “Stowage plan of such cargo.” All they have given, so far as the manifest is concerned, is

just a partial statement in reference to iron as stowed. They did not state the other cargo, where it was stowed, or anything else.

No. 15: "Stowage plan of such cargo." That is relevant for the same reason.

No. 16: "All correspondence and communications between shippers and consignees of cargo on board the steamship 'Denali' at the time of stranding, and Petitioner, its representatives and agents, relative to the booking, loading and dispatching of the steamship 'Denali' on such voyage, with particular reference to [677] the time of her departure from loading ports and her arrival at dispatching ports."

Now, that is important for several reasons, and I will just name a few. The testimony yesterday was that this steamship "Denali" was put on a schedule of sailings of definite dates. That is in writing. The documents are in evidence, introduced by the petitioner. The witness on the stand, both Mr. McKinstry and Mr. Wilson, who is being held, have been trying to put in the word "about" in connection with those dates, and they said that the date was fixed by another man, a traffic manager.

The evidence in this case will show that this ship was late in sailing. She had gotten her cargo from the shippers on the promise that she would sail on a certain date, and she did not sail on that date.

This testimony here about this "about", and that sort of thing, in order to effectively cross-examine and show that there is no foundation for that, we

want those records showing that they told these shippers that it would sail on this date, and on that date, and that sort of thing, and those records are in their possession.

The Court: Why is that material, as to what date she sailed? She might have stranded just the same if she had sailed on the following date, if there was privity of negligence in the first instance.

Mr. Ryan: A ship which is in a hurry, which is overdue, it is common knowledge, and we can show you the cases on it—and the Court takes judicial notice that at times ships are delayed—it is like a train which is delayed—they do things that they would not do under normal cir- [678] cumstances. It is an abnormal circumstance which bears on whether or not these people were really doing a job with adequate time for it, opportunity to do what they were supposed to do.

For instance, with reference to the adjustment of the compasses, the fact that this ship was overdue and had to get away, was already a day late, that may be the very reason why they didn't have their shore compass adjuster adjust these compasses. That is just to give the Court one instance.

No. 17: "All records, orders and bills connected with the repair, adjustment or compensation of compasses on the steamship "Denali" during the period beginning 1930 and ending May 19, 1935."

That is terribly important, for many reasons. That is in connection with the compasses. Mind you, the records of the orders and bills connected

with the repair, adjustment or compensation of the compasses, those will show who gave the order for the adjustment of the compasses on the previous times. That will tie down the duty and the responsibility to a certain man or men, and that is of the essence of the case. I consider that one of the most important items in the whole demand, and obviously relevant, especially in view of this statement that they didn't have any adjustment at all since July, 1933. Those records, orders and bills, will show the condition of the compasses at those times. You will notice that that runs back a little longer than the other one, back to 1930, and not 1935. That is in view of the fact that it bears on this very [670] important thing, as to the records, an admittedly competent compass adjuster looking at the compasses, and determining whether they were in condition or not. The reasonableness is expanded a little, because it bears so directly on the very point Your Honor is going to have to decide in this case.

No. 18: "All reports of the Petitioner and all reports of masters and officers of the steamship "Denali" respecting the condition of the steamship "Denali", and respecting any accidents or disasters suffered by said steamship", etc. Those would be reports made in the ordinary course of business, showing the condition of the ship. We are trying to find out the condition of the ship. That would be obviously relevant and important.

No. 19: "All communications between the master, pilot and officers of the steamship "Denali"

and other representatives of Petitioner relative to her stranding and ultimate loss in May, 1935."

Under the "Potomac" decision of the United States Supreme Court, all statements by the master of the ship are, in admiralty, admissions binding on the owner of the ship, and are evidence that we can introduce on our behalf.

Mr. Long: The citation?

Mr. Ryan: That is limited to the master.

Mr. Long: Have you the citation on that?

Mr. Ryan: It is the Potomac case.

Mr. Long: What is the citation?

Mr. Ryan: It has been called to the attention of the Court [680] forty times.

Mr. Long: Then you ought to know it.

Mr. Ryan: There is only one Potomac case in the United States Supreme Court, and I will give you the citation.

Mr. Long: Thank you.

Mr. Ryan: That has been followed just very recently in the Circuit Court of Appeals of the 2nd Circuit.

The Court: The 2nd Circuit?

Mr. Ryan: Yes, sir; very recently, and it is established law. I mean that the statements of the master with reference to the circumstances of a disaster, or with reference to the condition of his ship, are admissions which are binding on the owner when offered by us. And that is limited to the master.



Now, the statements made by other persons, other officers, are not admissible unless they are part of the *res gestae*, so that perhaps this demand here is a little too broad as to the other officers than the master. I mean that it should have been limited, so far as they were concerned, to such statements or communications as were part of the *res gestae*. I do not want to ask too much in any one of these demands.

Now, No. 20: "All records reflective of the practice of the Petitioner in respect to the adjustment of compasses of its vessels generally, showing when orders for adjustment were given, how often, by whom and to whom."

That is almost as important as any other item of the demand, because nobody can guess what organization [681] this petitioner set up for the adjustment of the compasses. That is something they decided, and that is within their knowledge, and something that they have a record of. That is very important, and we are entitled to it, because the written record they have shows how often they required the compasses to be adjusted, or if their records show that they did not have any adjustment of the compasses the records would be of just as much value because they would show a negative. Say for two years they didn't have the compasses adjusted at all, the records showing that statement, or that they did not have any record showing the adjustment of compasses, that certainly would be very important in the case, and I want to particularly stress that.



No. 21: "All reports, or copies thereof, made by Petitioner or its representatives, or by the master or officers of the steamship 'Denali' to underwriters or their representatives in reference to or in explanation of the stranding of the steamship 'Denali' ". Now, any such report or copy thereof made by Petitioner—that is, any of the managing officers of the Petitioner, or by the master of the ship, would be admissions of the company. The Potomac case limits it to the master.

Mr. Bogle: I am sorry; I did not hear what you said.

Mr. Ryan: I said that any statement or report which is in writing, and which is in your possession, and which was made to somebody other than yourself as counsel preparing the case, so it would be in the nature of privilege—made by a managing officer of your company, or by the master of the vessel, that is a document which is a [682] written admission on behalf of and binding your company, and if it is in your possession I want it.

Mr. Bogle: Is that under the Potomac case, too?

Mr. Ryan: No; the Potomac case limits it to the master, but that does not apply if the managing officer of a corporation admits a fact and admits it in writing. If so we are entitled to regard that as an admission and as evidence.

Mr. Bogle: I thought you had some authority, that is all. If you have any authority I would like to know it.

Mr. Ryan: Is it your contention that the man-

aging agent or officer of the company, that his admission in writing is not evidence for us?

Mr. Bogle: All I am getting here is your notice to produce.

Mr. Ryan: Those documents in writing, so that we can offer them in evidence against you.

No. 22: "All reports, or copies thereof, made by Petitioner or its representatives, or by the master or officers of the steamship 'Denali' to any and all Governmental boards, bureaus, commissions, agencies or authorities relative to the stranding of the steamship 'Denali' on May 19, 1935, and her ultimate loss."

That is covered by No. 21, insofar as they are made by a managing officer of the Petitioner, or by the master of the "Denali". They are obviously relevant, and they are obviously material. Also, they are obviously admissible as admissions binding on the Petitioner.

The Court: At this point we will take a five-minute recess.

(Recess)

The Court: Mr. Ryan, have you any authorities on that, on [683] those reports made by the master and others to underwriters?—To other after the accident, after the stranding?

Mr. Ryan: Yes. The Potomac case covers that exactly, Your Honor, in the Supreme Court. Any statement by the master with reference to the circumstances of the disaster, made at any time, is an admission binding on the owners. Just the master.

And on the other point, statements made by the managing officer of the corporation—I do not think I need to submit any authority for that.

Mr. Bogle: If Your Honor please, I think that counsel is unduly concerned as to whether or not the Petitioner is going to prove its case. He bases his demand for these various documents upon the ground that they relate to the unseaworthiness and privity of knowledge of the owner.

I am inclined to agree with him, in the main, that a large portion of these documents he refers to will become material in this trial, but they are material in the essential and primary proof of the Petitioner's case, and if it will ease his mind any I will tell him now that during the course of the trial, in an orderly way, through the witnesses, that most of these documents that are in our possession will be produced.

But counsel knows, or should know, that there is no such procedure in admiralty as he is following in this matter. A demand for production of documents, there is no such procedure in admiralty.

Section 636, Title 28, of the Judicial Code, ex-[684] pressly provides for the production of books, writings and other documents pertaining to the issue in the trial of actions at law. There is a large number of cases holding that this Section 636 relates to actions at law only, and is inapplicable to proceedings in admiralty. Among others, Judge Neterer expressly passed upon that matter in the "Princess Sophia" case, cited here as one of the authorities.

Section 637 provides that the mode of proof in cases of equity and of admiralty, and maritime jurisdiction, shall be according to the rules now or hereafter prescribed by the Supreme Court, except as herein specifically provided. Now, that is Rule 31, for interrogatories, and Rule 32 is for the discovery of documents. The "other methods hereinafter provided", are first, by depositions de bene esse; second, by depositions according to state practice; third, depositions dedimus protestatum; and next, depositions to perpetuate testimony in admiralty proceedings. Next, and last, by subpoena duces tecum.

The Court: Mr. Bogle, the way the Court's mind was working on this was that this was to inquire—one of the inquiries in the mind of the Court is to inquire if this demand may be considered as, in effect, a subpoena duces tecum.

Mr. Bogle: No, Your Honor, because a subpoena duces tecum must be a subpoena served upon the witness who has custody and control of the documents. We will produce in this trial, in an orderly way, from time to time, the witnesses who have the custody of the material docu- [685] ments, and will prove the documents by those witnesses. They have a shotgun order here that in effect calls for all the documents in the possession of this company. If in the orderly production of proof, if in the interrogatories to the witnesses, as counsel proceeded yesterday, he feels that we have not produced all the documents that are material, then

in the course of the trial he can demand that a witness produce additional documents, and where material, and if the Court orders, we will produce them. But in advance of trial producing for him in one mass a carload of documents here, which make up the case of the Petitioner—well, I think it is essential that we proceed in an orderly way to produce those documents with the different witnesses.

We have got to produce the documents from the executive department, relating to their privity of knowledge; we have to produce the documents from the maintenance and repair department relating to the method and details of repairing these ships; we have got to produce the ship's documents, if any, from the master or officers of the ship who had custody of those documents and can testify with reference to the documents.

If they want to anticipate and subpoena some of the witnesses in their own case to come in here, with a subpoena duces tecum, to produce any documents that we have not produced, and which we have not produced upon their demand, then that is a part of their case.

The Court: Mr. Bogle, the Court's opinion is that much of this material mentioned in the demand, and also in the application for discovery, is material and should, [686] if properly proceeded against in any proceeding properly seeking it, should be made available to these Claimants.



If there is some rule of law that a demand to produce is not the proper way to get it, then the Court will consider any authorities which either counsel wish to submit to the Court on that point, and if it turns out that counsel now addressing the Court is correct in his contention that a demand is not the proper way of getting at it, then the Court will consider any other proceeding to get it which counsel for the Claimants may be advised of.

Mr. Bogle: Does Your Honor wish authorities in support of the statement I have just made?

The Court: Yes; that the demand is not the proper way to get it, the demand to produce.

Mr. Bogle: There is Judge Neterer's decision in the "Princess Sophia" case, 269 Fed., 651, at page 655.

The Court: What is that citation?

Mr. Bogle: 269 Fed., at page 651. In Volume 28 of the Judicial Code, Section 636—

The Court: Volume 28, U.S.C.A. what?

Mr. Bogle: Volume 28, U.S.C.A., Section 636.

The Court: And note of cases thereunder, what number?

Mr. Bogle: It is all under the first note, but the cases pertaining to this are under the sub-note headed, "Section applies to actions at law only." This section relates to actions at law only, and is inapplicable to proceedings in admiralty. There is a long list of cases cited in support of that statement, if you want me to [687] read them into the record.



The Court: No. Is there any specific case which you have in mind which supports your contention that this matter may not properly be sought by demand for production of documents at the trial? I would like to have the opportunity of considering those cases, because of what has been said. I believe much of this material is relevant, and in a proper proceeding to get the use or benefit of it it should be made available to the Claimants. The principal question that I have in mind now is to determine whether or not this demand for the production of documents is a proper proceeding.

Mr. Bogle: I agree with Your Honor that a good deal of this information is relevant, but I do not think it is information that we have to turn over to the Claimants, who have no issue, no burden on the limitation issue, whatsoever, which would result in them having our proof in advance.

The Court: The question now to be determined by the Court is not solely as to whether part of it or all of it might be material to your case, the Petitioner's case. The question is whether or not it is material and relevant to the case of the Claimants, their defense or claim.

Mr. Bogle: Exactly.

The Court: And whether it may be properly made available to them. That is what the Court is now to determine. If, incidentally, it may be a disclosure of some of your proof in advance of the time that you may seek or desire to produce it, that would not prevent, it would seem to [688] me, the

Claimants from, or cut them off from their right to have the benefit of it.

Mr. Bogle: That is quite true, Your Honor, but when I say the documents are material, they are material only on our issue of limitation and privity of knowledge. That is what counsel has based his demand on, that they both relate to that. They do not know how we are going to prove that the vessel was seaworthy, or lack of privity of knowledge. He wants these documents in advance to see how we are going to prove it.

The Court: Is there any other authority you wish to call the Court's attention to in support of your contention that the proper method of getting this stuff is not a demand for production of documents?

Mr. Bogle: In addition to the "Princess Sophia" case is the case of Havemeyer, et al., vs. Compania Trans. Espanola, 43 Fed. 90; a case in 29 Fed. 341. They are quoted under this section in the Judicial Code. It is on page 351, Volume 28 of the Judicial Code.

And following that, of course, Your Honor, there is Section 637 of the Judicial Code, Volume 28, at page 362; 639 Judicial Code, Volume 28, page 364; Section 644, Judicial Code, at page 403; Section 646, Judicial Code, at page 412; and Section 647, Judicial Code, at page 413.

I might state that the case that counsel called attention to, and the only case he cited in support

of this was an action at law on a fire insurance policy.

The Court: Is that the "Potomac" case?

Mr. Bogle: No; not the "Potomac". [689]

Mr. Long: The "Potomac" was not a limitation case, Your Honor.

Mr. Bogle: The case he cited in support of his statement that he was entitled to the production of these documents at the time of trial was the General Motors case, wasn't it?

Mr. Long: 50 Fed. 2nd, 803.

Mr. Bogle: That was a fire insurance policy case, an action at law, expressly coming under that section of the Judicial Code.

The Court: The Court is going to consider the authorities, and is going to take the time necessary to consider them, possibly at a recess of these proceedings. I will say this, however, so that counsel may be giving such further consideration to it as they may think is appropriate; the way my mind reacts to this request, so far as its materiality is concerned, it seems to me that in view of the proof that was made yesterday about this vessel lying up, and about the custom that the company had of having general inspections of vessels during the early part of the year, in the winter time, before the season's operations, and in view of the further fact that it appears at this time in the proof that this vessel had not been in the regular service, that is, on a regular and continuous schedule, year in and year out, the Court is beginning to feel, with-

out now definitely saying finally that that would be the ruling, that perhaps beginning with the year 1933 these log books and compass records might be thought by the Court eventually to be material, and if the Court should grant any such [690] privilege as that sought here, in a proper proceeding to obtain the privilege, the Court, as now impressed with the matter, would be inclined to allow access to those records beginning with the year 1933. During that year some work was done, as the Court is advised—it may have been only in argument of counsel—some work was done on those compasses in July.

Mr. Bogle: They were adjusted by a professional adjuster. That is in the case.

The Court: And having that circumstance particularly in mind, if I were now passing upon an appropriate request for inspection of those documents, such a request as Claimants are entitled to have the Court pass upon, I would be inclined, with the information that the Court now has, to allow an inspection of those documents and use of those documents which may be permitted by law.

Mr. Bogle: With reference to the compasses?

The Court: The compasses, log books, and those matters which they have asked for, from 1932 to 1935, and in other instances from 1930 to 1935. I would be inclined at this state of my information to allow it, beginning with the year 1933. I wish counsel on both sides would have that impression that the Court now has touching the matter, and

see if counsel cannot agree upon what documents and records may be produced here.

Mr. Bogle: In order to save the time of the Court in the trial of this cause we have filed affidavits here that the azimuth books and the deviation cards were lost with the ship, and that we do not have them in our possession. They have asked us to produce copies, or a [691] copy of such cards in the possession of the independent compass adjuster who made the adjustment in 1933. We are quite prepared, and in fact our next witness in the case is intended to be the compass adjuster who made that adjustment in 1933. He will testify to the deviations from his records, what the deviations were. We have no deviation card.

I am having him draw up a copy of the deviation card, the last adjustment in July, 1933, which he will sign, if that is satisfactory to counsel. I will also have him draw up his last compass adjustment on this vessel previous to 1933, and sign it, if that is satisfactory to counsel.

Mr. Ryan: I would prefer that his original records in that connection be produced, because my information is that they show something else than what you say is now being drawn up and will be signed: [692]

Mr. Bogle: Now, Your Honor, you can see the impropriety of this. He can subpoena that witness as well as we can, and reach him by a subpoena duces tecum.



Mr. Ryan: Well, if the Court please, I will state point blank what I have in mind. I am giving this away in advance, for the Court's information. We will show that orders for the adjustment of these compasses came from the company's managing office. Now, this man apparently is going to select certain records from the files of the company with respect to certain things and will leave out other records with reference to the deviation cards and so forth, and will leave out the circumstances as to who gave the original order. Of course, they say that that can be handled when that witness gets on the stand, but I do not want this to go off on the claim that there was no demand for production of those documents.

Mr. Bogle: I would deny the statement of fact that has just been made, and I want to deny the inference that we are trying to get in here something that does not disclose the whole record. We have not the possession of them.

The Court: The Court's statement was relative to what the claimants might be entitled to.

Now, on the question of law for determination by the Court the question has been raised as to whether this is the proper procedure for the purpose of getting these things. Have you any authorities as to whether this is the proper procedure? The question has been raised, and it has been seriously contested as to whether or not the demand is a proper way of getting these things. [693]



Mr. Ryan: Now, on that I will give you my personal opinion, and that is this, that the Supreme Court Admiralty Rules—that is, the new ones—have been repeatedly held to have enlarged the right of discovery to give the Court the very power that is now being challenged, that the proper way to require the production of these documents is through a motion under those Admiralty Rules, what has been called a discovery here, and which Your Honor has denied was the proper way, and that the proper way would be to obtain them under a subpoena.

The Court: I said that that was without prejudice to any right that you might have for the production of them.

Mr. Ryan: That is right, but the impression I mean that was given, as I understand it, was that we had some other way. My personal opinion, however, and I have had several situations like this involving those rules and the authorities under them, is that the plain purpose of those new Admiralty Rules is to give an Admiralty Court in conducting the trial the right to require that documents and records which are relevant and material be produced at an early stage of the litigation or at an early stage of the trial, so that the situation won't occur, as we had here yesterday, of a witness going on the stand and referring to records which he does not have, and then he has to be jerked off of the stand and another witness put on temporarily, and then he has to be recalled.

The Court: It does not seem to me that your present remarks are responsive to what I have stated. I am trying to determine whether the Court has any authority under this demand of yours for the production of documents at [694] trial to order them to be produced.

Mr. Ryan: I think that the Court under this demand that we have made has the power to require the production of these documents, but I think the power flows essentially from the new United States Admiralty Rules.

Mr. Bogle: Which rules?

Mr. Ryan: And the Court can exercise that power at any time, and I at this time do not want to be caught in some sort of a technical trap here by counsel first implying that the motion for discovery was improper, and that we should have furnished him with a notice to produce.

Mr. Bogle: I have made no such contention.

The Court: I will hear from you later, Mr. Bogle.

Mr. Ryan: I respectfully ask the Court at this time, and I respectfully now make a motion under the new Supreme Court Admiralty Rules—

Mr. Bogle: (Interposing) Which ones?

Mr. Ryan: (Continuing) For the production of the various documents which I named in this notice to produce, and I am certain that the Court has the power to issue an order in accordance with that; so that there will now be before the Court that motion, plus a notice to produce. This is in substance a motion for discovery of the documents under the Supreme Court Admiralty Rules.

Now, Your Honor has asked me for an authority with reference to the production of a report by a master to the underwriters. I refer Your Honor—

The Court: (Interposing) I will not hear you on that now.

Mr. Ryan: I just want to give you a case on that. [695]

The Court: I will not hear you on that now.

Mr. Summers: It seems to me that Your Honor has indicated a desire that these authorities be presented, and I would suggest to Your Honor that we have an adjournment at this time until two o'clock, which will give us an opportunity to assist the Court.

The Court: I wish to be advised as to whether the demand for the production of documents now before the Court is a proceeding which the Court can entertain because of what I said awhile ago with reference to what I thought the claimants were entitled to. I would like to determine that now.

Mr. Ryan: There were demands made yesterday in connection with the testimony of the witness on the stand. I want to submit those to Your Honor. I do not want to argue them. I just want to have it understood that they are submitted here.

The Court: Now, Mr. Ryan, if you have an authority directly touching the question which you just have spoken of, relative to communications from the master about the causes of the wreck after the wreck had occurred, I will take that notation now.

Mr. Ryan: That is the case of the "Admiral Polk", 32 Federal, 2nd, 102. It is also reported in 1929 American Maritime cases, 1691. I also have the exact citation of the "Potomac" case now. It is 8th Wallace, United States, 590. *Bedell v. S.S. Potomac*. It is also reported in 19 Law Edition at page 51.

The Court: Now, if you gentlemen on further consideration of this matter during the recess of the Court [696] feel that you should file a written—something in writing which you consider, upon further consideration, to be in response to objections by counsel for the petitioner, that the demand is not a proper proceeding, you will kindly file such further proper proceeding that you may be advised of so that the Court may consider that, having in mind, as I have previously indicated without finally ruling thereon, that there is some of this matter which it seems to me is material and relevant from the standpoint of the claimant, and which the claimant in a proper proceeding should be entitled to have.

The Court is recessed until two o'clock.

Mr. Summers: Very well. I just want to introduce to the Court Mr. T. Tatesby Jones of the firm of Bigham, Engler, Jones & Houston. I do not think that he has been admitted to practice in this court, and I trust the Court will permit him to address the Court in the event that such an occasion arises.

Mr. Jones: I merely asked Mr. Summers to introduce me to you, not having had that pleasure before of meeting you.

The Court: The Court takes pleasure in noting your presence with the Court in this case, and you are privileged to represent the interests with whom you may have some relationship in this case before this Court.

Mr. Summers: I might state that he was admitted here some years ago.

(Whereupon an adjournment was taken at 11:40 o'clock A. M., October 20, 1937, to 2:00 o'clock P. M., October 20, 1937.) [697]

October 20, 1937,

2:00 o'clock P. M.

The Court: Mr. Ryan, did you wish to respond to this suggestion of Mr. Bogle that this demand was not a proper procedure in an admiralty case.

Mr. Ryan: I hand Your Honor a memoranda of authorities which has been served on the other side and filed with the Clerk. I also hand Your Honor, with your leave, a motion which has also been served on the other side, and which is a separate document, a motion for production under Admiralty Rule 32.

Mr. Bogle: I would like to have the record show that these have been served upon us within the last five minutes. I haven't had a chance to examine them. Practically, they have abandoned the notice to produce, and have reverted back to Admiralty Rule 32, providing for discovery.



The Court: Is that your intention, to have this motion reassert your claim, deal in part with your original application for discovery under Admiralty Rule 32?

Mr. Ryan: In a sense, yes, Your Honor, excepting that this motion for production of documents deals precisely with the second part of Admiralty Rule 32 and the authorities supporting it I think are very clear.

The Court: Do you happen to have Admiralty Rule No. 32?

Mr. Ryan: It is quoted right in the first part. I neglected to show that to Mr. Dennis.

Mr. Bogle: Of course, Your Honor, the part of that rule that is quoted there does not give Your Honor a clear idea of what the rule is. It is a motion for the discovery [698] of documents prior to trial. The portion of it dealing with that is left out.

Mr. Ryan: I beg your pardon; that is not it. The rule has two parts, and this is under the second part. This deals with the power of the Court specifically during the trial, or any other time.

Mr. Summers: It is our conception, if Your Honor please, that the first part of the rule authorizes the discovery of documents before trial, on motion, and that the second part of the rule authorizes the Court to grant an order requiring the production of documents, and that there are two separate phases to that rule. Our motion for discovery before trial was made under the first portion of the rule.



The present motion is made under the latter portion of the rule.

The Court: The Court wishes to take a little time to consider this memorandum. After which I will hear from counsel further, if need be.

Mr. Bogle: We have not had time to consider it, either, Your Honor.

The Court: I wish the bailiff would kindly get me from my chambers and from my secretary Admiralty Rule No. 32.

Mr. Ryan: Here is the complete Admiralty Rule No. 32. It is quoted in the brief that was filed before Judge Neterer in this very case, but it is quoted in full.

(Intermission)

The Court: I will hear your further statement now, Mr. Ryan.

Mr. Ryan: I wish to add that this motion is made without waiving the notice to produce, or demand to produce, that has already been filed and served, argued and submitted [699] to Your Honor. I also want to supplement both of those by saying, or I want to add as a second ground in support of this present motion, that it is made also under the Admiralty Court's statutory right as defined in United States Revised Statutes, Section 918, to regulate its own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings, and under the Admiralty Court's powers to follow and require the most expeditious and equitable procedure in a case,

without reference to technical rules of pleading or procedure such as apply at common law, under the principle announced by the Supreme Court of the United States in the "Syracuse", 79 U. S., 157.

In other words, there is a general principle under which Admiralty Courts have always functioned, that they have broader powers in that respect, and certain inherent powers to get at the facts.

The point is also mentioned by Judge Hough, I think, I forgot to quote from that case. He said the Admiralty Courts deal with seamen who scatter around, and with records that are lost and substitutes required, and that the Court necessarily has to have a more liberal practice than the common law courts would have, and that anything tending to expedite the trial of a case, or to expedite the production of documents, and that sort of thing, should be followed by the Court.

The Court: May I understand from what you have said now that you are making such response to the objection noted by opposing counsel just before the recess, that this demand [700] for production of documents at the trial is not in accordance with the practice in admiralty cases, but is authorized, if at all, only in actions at law?

Mr. Ryan: No. No; I do not think that is so at all. Notices to produce have been served and have been complied with, invariably, so far as I know, and I have been practicing admiralty law for 20 years, by the shipowner, particularly, in limitation

cases where they have the burden. I mean that I think the notice to produce was proper practice to require them to produce the documents. I also think that the court has the power under the latter part of Admiralty Rule 32 of the Supreme Court—that is, the new admiralty rule promulgated in 1921—to require the production of these documents. Language could hardly be clearer or more specific than that which the Supreme Court uses there.

And also, independently of that, this court has the power under the statute, the Revised Statute, giving it the authority to regulate, specifically to regulate its own practice in any way that it believes necessary in order to prevent delays and to advance justice.

And also under the general admiralty practice of the courts as defined in the "Syracuse" decision of the Supreme Court, and followed by Judge Morrow in several of his opinions, in the Circuit Court for this circuit—that the Admiralty Court is not bound by pleadings or technicalities, like *DuPont vs. Vance*, in the Supreme Court of the United States. A court tries to advance justice and the equities, and in this particular situation right here today opposing counsel said to Your Honor that [701] he intends to produce them at some time that he sees fit during this litigation, most of the documents that we have demanded here, without letting us know just which ones they are to be. He is apparently just holding them back until after the witnesses have testified on direct, and until after, as occurred in this very case yesterday, where two witnesses were called

and both of them referred to records that were not in the courtroom and demand was made for them, and they are not produced here, and the witnesses are being held here after only part of the testimony has been taken. It is that kind of a situation that Admiralty Courts do not tolerate. They require that those documents that are quite obviously relevant and material to the issues that have been framed by the pleadings shall be produced, certainly at the trial.

There has been a certain amount of discretion exercised one way and another as to producing them before trial. Judge Inch points that out specifically, and that is the reason I cited that case. He says that during the course of the trial the Court looks at the case as a whole.

There are certain documents, and counsel has admitted that they are material and relevant and that he is going to use them, that are evidence in the case, and they will require examination and rather extensive study by anybody to get at the facts in them, and to correlate them, and we want that opportunity at an early stage of the trial, so that cross-examination will be concise and the trial of the case expedited.

For instance, log books, you have to go over those [702] rather carefully, and you have to take time to do it. If they wait until they finish their direct examination and then for the first time produce a log book or paper, as they suggest, we would have to ask that the Court just declare a recess for an

afternoon, or maybe a whole day or two days, whereas, if they were available we could have our assistants do that.

The Court: May I suggest, Mr. Ryan, that the Court feels called upon to make a ruling touching the merits of the application. As to what should be done under some motion or application or demand, which is a proper admiralty proceeding, that is another thing. I will hear you at that time before making a ruling on the merits of any application. The Court has invited counsel for the Claimants to respond at this time to the objection made by opposing counsel, Mr. Bogle, for the Petitioner, that this demand for production of documents at the trial is not a proceeding pertaining to admiralty trials or cases, but is applicable to proceedings at law, in actions at law. I have asked you to respond to that objection.

Mr. Ryan: Yes, sir.

The Court: The position of counsel for the Petitioner makes necessary, it seems to me, that the Court rule upon that objection.

Mr. Ryan: On that point, Your Honor, I can say of my own knowledge, that there have been hundreds of cases in which notices to produce have been made in admiralty, and have been complied with. This situation has come up and the documents have been ordered to be produced, [703] so that there is a settled admiralty practice on it.

There is only one opinion that I know of that would even suggest the contrary, and that is an old



opinion of Judge Neterer in the "Princess Sophia" case at an early stage of the "Princess Sophia" case, where he suggests something there—and it related more to the powers of the Court under interrogatories, under the old admiralty rules—now, the decision that they quoted to you in that "Princess Sophia" case was rendered in the year 1920 by Judge Neterer. That was before the new United States Supreme Court Admiralty Rules were promulgated, which was on March 4, 1921.

There hasn't been any decision of any court since those new admiralty rules were promulgated that a notice to produce, or that a motion for production, or anything like that, that the Court was going to be legalistic or technical about it at all. The plain point about it is that you get notice to the other side that there is a document in their possession which is material and relevant in the case, and which should be made available for examination at an early stage in the trial, so that the trial of the case can be expedited. The authority of the Court for requiring that to be done, as I say, is based first on Admiralty Rule 32, the latter part of which is brand new, in the year 1921, and on the statute and on the general admiralty practice as defined in the "Syracuse".

Now, at common law notices to produce documents at the trial, as I understand them, you notice their production and then if they are not produced the Court doesn't [704] order their production, if they are not produced that gives you the right to



introduce secondary evidence. That is the common law practice.

In the Admiralty Courts you make the motion for the production and the Court requires the production. Take records with reference to the facts about this ship, the condition of this ship, which are exclusively within the possession of the shipowner at all times, Congress by the statute requiring the contemporaneous record of entries to be made in log books, for instance, and entries in the deviation books, and all that sort of thing, and with reference to charts—they are all in the same category—Congress has recognized that where one party has exclusively all the written records which relate to the disaster, and which are almost surely going to come out in the trial, either by cross-examination of the witnesses if they are called by the Petitioner—it may be he is not going to call these witnesses, and if not our only opportunity to see these documents will be now, under such a motion as this.

I say, that the notice to produce is a proper practice in admiralty. We have made the motion and we do not waive it, we stand on it.

We also make a motion for production under the latter part of Admiralty Rule No. 32 of the Supreme Court, and press that, and I am sure that under the decisions we have quoted to Your Honor that Your Honor has the authority to grant it. And also under the inherent powers of an admiralty court Your Honor has the authority to take such steps with reference to procedure and the orderly

[705] course of litigation as will best advance justice and advance the trial. Any question about written records obviously can be settled by inspection, and that will do away with the necessity of cross-examination of witnesses by people who are kept in the dark with reference to what is the contents of the documents. [706]

The Court: Mr. Summers, would you like to supplement anything that has already been said with reference to the particular inquiry that is now in the Court's mind? If you have any information to give to the Court in response to the objection of opposing counsel that this demand for the production of documents at the trial is not a proper proceeding in this case, you may do so.

Mr. Summers: I have this to say, that I think claimants perhaps might concede that the statutory demand—I mean the statute on the applicability in law cases to a demand for production may not be applicable to these proceedings, but Mr. Bogle has assumed, which I think is erroneous, that our application has been made under the statute.

Our position, as I understand it, is simply this, that the inherent powers of Admiralty Rules, reflected by the Revised Statutes and reflected by the language of the Admiralty Courts, clothes the Admiralty Courts with power not by virtue of any statute to grant a demand for production at the trial. That is my answer so far as Mr. Bogle's contention is concerned.

Now, I think it is plain that even though that demand has been made, if by express Admiralty Rule we are entitled under the latter half of Rule 32 to make a motion or a demand for production under that rule, we may make it under that rule. Your Honor might say that perhaps that is somewhat of a departure from the demand which was discussed before, and I think that that is true, but Your Honor did say before adjournment for luncheon that Your Honor wished to be advised if there was some particular procedure by which [707] this Court, conceiving as it has that certain documents are revelant and material—whether there was some particular procedure by which those documents could be required of petitioner in behalf of claimants; and for fear that Your Honor might not agree with us that our demand for production of documents previously made was made within the inherent powers of Admiralty Courts and not under the statutes which controls the demand for production in law cases, we supplemented our previous request by the motion which has been filed since the Court has convened this afternoon.

If I may be permitted, I would like to contrast, Your Honor, the language in the first part of Admiralty Rule 32 with that in the second part. It is presumed before I read this rule—I think it must be presumed that the Supreme Court chose this language with discretion and with nicety. The first part of the rule says, “After joinder of issue, and before trial, any party may apply to the Court for

an order directing any other party, his agent or representative, to make discovery on oath of any documents which are",—now, what kind of documents—"documents which have been in his possession or power relating to any matter in question or issue".

Then the second part reads, "And the Court may order the production"—not discovery, mind you—"and the Court may order the production by any party, either his agent or representative on oath of such documents in his possession or power relating to any matter in question in the cause". Whatever is necessary, describing the documents.

In other words, it seems to me that that contrasting [708] language and phraseology is highly suggestive of the very point which we are making, namely, that we are not renewing by the application made this afternoon anything that has been done before. We are making a new motion. We are taking advantage of a rule that we did not feel that we were going to be forced to take advantage of previously, but Your Honor has suggested doubt as to a previous demand for production of documents. Your Honor has overruled our motion for discovery made prior to trial. Now we resort, supplementing everything else that we have done, to the second phase of this rule which expressly provides for an order requiring the production of documents relating to any matter in question in the cause.

The Court: If there is anything further that the Court desires to touch on the merits I will again hear you, gentlemen, on that. I will hear from opposing counsel in response to these observations.

Mr. Bogle: If Your Honor please, I do not feel that very much can be added to the argument this afternoon, other than the fact that the parties are now proceeding upon a presumption that Admiralty Rule 32 should be split into two parts. I do not have the Admiralty Rule before me, but my recollection is that the sub-title of the rule itself provides for the discovery of documents prior to trial.

The Court: Rule 32?

Mr. Bogle: Yes. Rule 32, "Discovery of documents before trial". That is the title of the rule in its entirety. There is no logical subdivision of the rule under that title to relate to any demand for production of documents at the time of trial. [709]

Mr. Summers: Might I suggest—

Mr. Bogle: (Interposing) Just a moment. I did not interrupt you—

The Court: (Interposing) Just a moment, Mr. Summers. Proceed, Mr. Bogle.

Mr. Bogle: Now, I do not want to be misunderstood. I fully recognize the rule that at any time during the progress of a trial, during the examination of a witness, if a demand becomes material, it is quite proper to make the demand through that witness for the production of any such documents. A demand has been made in that respect for the production of a number of documents. We are perfectly willing, and that is a matter entirely in the discretion of the Court, whether a demand during the progress of a trial for the production of documents is proper or material.



It is not the fact that we are trying to prevent the production of documents, but we are trying to proceed in an orderly way in the trial of our case. We have an issue of limitation to prove, and we are trying to prove it. There are certain facts that we have to prove on that issue. Mr. Ryan says that we must produce witnesses. I should think that if we produced witnesses and did not sustain the burden that is upon us he would be entirely satisfied. We have got to prove privity of knowledge, no matter how it may have occurred.

Now, these documents are within the knowledge of the petitioner. It is true that in a trial of this kind the same documents may have some bearing upon both issues, but the claimants, in the way that we are proceeding in [710] this trial, do not have to take up that burden, proving primary liability, until the petitioner has finished. Then if there are any documents that are not produced in the petitioner's case—the petitioner's case will all be on the matter of privity of knowledge and if there are any documents not produced in the progress of the petitioner's proof, then it will be material for them to demand those documents, or if they know of any documents. But this is a broad fishing expedition for any and all documents, in very few instances specifying what documents they want. They say, "Any and all documents in your possession". Now, if they know of any documents and they want those documents, there is a procedure provided for subpoenaing the witnesses by subpoena duces tecum.



The Court: Do you wish to supplement that, Mr. Long?

Mr. Long: Just on one point, if Your Honor please. Mr. Ryan in his argument distinguishing Judge Neterer's rule in the *Sophia* case, intimated that Judge Neterer's decision having been prior to the adoption of the New Admiralty Rules of 1921 was of really no value. I just want to call Your Honor's attention to a more or less recent case—a decision by Judge Neterer in the 53 Federal, 2nd, page 266 in this district in which an application for discovery under Rule 32 was made. It became necessary at that time for Judge Neterer to determine the extent of the discovery proceedings, and in that connection he stated and found and ruled that Admiralty Rule 31, relating to interrogatories and the scope of the interrogatories, must be construed together with Admiralty [711] Rule 32.

With Your Honor's permission I will just read one or two sentences from his decision, "Rule 31 and Rule 32 must be considered together, and a litigant may not, under Rule 32, invoke the provisions of Rule 31. It is possible that some of the information sought by the libelant would be discoverable under the provisions of Rule 31, but, if successful under Rule 32, would be granted a privilege which is not warranted by the rule, law, or justice. A litigant may not, by interrogatory or discovery of documents, be permitted to pry into the adversary's evidence, or compel the names and

addresses of witnesses". That was the discovery that was there sought.

I simply want to call that to Your Honor's attention to illustrate that Judge Neterer has passed upon the applicability of Admiralty Rule 32, and in so doing limited its scope as prescribed by many, many decisions under Admiralty Rule 31 that the material sought there under 31 or 32 must be relevant or pertinent to the burden which the claimant or the interrogating party must himself sustained, and cannot be used to pry into the evidence of an adversary in a fishing expedition such as we have here.

Mr. Ryan: What is that case that you have there?

Mr. Long: I cannot pronounce the name. I will show it to you (hands book to Mr. Ryan).

Mr. Ryan: May I suggest, Your Honor, that that title which Mr. Bogle referred to is one that was inserted by the particular private publisher who published that volume that you have. Those are not the official rules as promulgated by the United States Supreme Court. The [712] rules as promulgated are in the United States Supreme Court Reports for the year 1921 and they are also in volume—it is either in volume 2 or volume 3 of Benedict on Admiralty. That "before the trial" is obviously an insertion to the rule as promulgated by the Supreme Court.

The Court: Incidentally, hearing the comment concerning Benedict on Admiralty on this question, it seems to be inspired by some thought like that ex-

ressed by Judge Hutchinson in 6 Federal, 2nd, at age 89, and following:

Mr. Ryan: I want to disabuse anybody's mind from the idea that we are trying to pry into the evidence of the other side. That is not it at all.

The Court: I am not ready to consider that. It has no relation to the merits.

Mr. Ryan: I see. Well, I think we have covered the ground as fully as we can.

Mr. Bogle: I assume that Your Honor has read the decision in this same case in which he deals very much with this trouble, not only notices of discovery, but which came up on the question of interrogatories, and in which he sets forth the procedure.

The Court: I am referring now to the application of the claimant United States for discovery. In ruling thereon the Court through inadvertence and mistake, and through no fault of any party or attorney in the case, assumed that the demands of claimants to produce at the trial stood for determination on their merits, without objection to the appropriateness of proceeding by such [713] demands which covered substantially the same subject matter as that involved in the application for discovery. Since that ruling of the Court no further proceedings have been had in this case except to hear argument and to give consideration touching the matters presented by claimant's demand for production of documents at the trial.

Wherefore, and by reason of such inadvertence and mistake, and in view of the limited proceedings which have occurred since that ruling, the ruling and order of this Court denying the application of the claimant United States for discovery is hereby vacated and set aside, and the Court will now reconsider that application.

Mr. Ryan: If you will just wait a minute I will get Mr. Summers. He has just stepped out for a minute.

Mr. Summers: I am sorry that I was absent for the moment. As I understand it, Your Honor has granted the Government's application for discovery?

The Court: Let the reporter read for the further information of all present the statement of the Court which has been made, and the ruling therein contained.

(The statement and ruling of the Court was read.)

Mr. Summers: The application of the Government is in a number of particulars more limited as to the documents sought than the application originally made by the claimants Pacific Coast Coal Company, et al. The application for discovery is, as has been recited to the Court numerous times recently, one which is based upon Admiralty Rule No. 32 permitting applicant and the Court to require from [714] petitioner any documents which are or have been in his possession or power relating to any matter or question in issue. In other words,

s that rule is read liberally it is not to be confined, if we are to abide by the language of the Supreme Court itself—it is not to be confined to some document which claimant, the United States, needs for its case, or which is—or it is not to be limited to documents which are not material to the petitioner's case. The scope that we are entitled—the government is entitled to any documents relating to any matter or question in issue.

Now, I submit that an examination of the items in the Government's application for discovery reflects immediately the relevancy and materiality of those documents, at least to the extent that their nature is such that they may be relevant, until examination has disclosed that for some reason or another, by virtue of the limitation of issues in the case, a particular document is of no particular value.

I submit that the Government's application for discovery is reasonable in its restriction as to time; in other words, that it does not impose upon the petitioner any unfair or burdensome search of its files and records for documents that are so remote as not to be within the realm of relevancy and materiality. Illustrating that, I refer to item No. 1 which asks for the deck and engine log books of the Steamship "Denali" for the year 1934. Your Honor has already indicated the Court's opinion with respect to that item, in view of the fact that this was not a ship in continuous regular service but one occupied [715] in operation only during certain seasons.



The same statement is applicable to item 2, the bell books for the year 1934. The same is true with respect to item No. 3, "Any and all documents requisitions or reports for repairs, renewals or new equipment, recommended for or needed by the Steamship 'Denali', and all records of repairs, renewals or new equipment performed upon or furnished upon or to the Steamship 'Denali' for the year 1934".

The same thing is applicable to the compass deviation records or cards, or data of or for the Steamship "Denali"—the data respecting that important document. Those are limited—I retract that. The demand as made requests the deviation cards and the compensation and adjustment data back as far as the year 1930. I think that that is undoubtedly on the theory that the last adjustment and compensation of those compasses as disclosed by the answers to the interrogatories filed by petitioner was on July 21, 1933, which means this that we are asking in effect for the three years record of this compass as reflected by the records of an independent compass adjuster, which the records in this case indicate was the resort for that purpose made by the petitioner.

I may say right there that counsel, on the item of deviation cards and compass adjustment data had somewhat sought to confuse the application by suggesting that what we are seeking is only a copy of that which was on the ship and which was lost. I concede that the fact is that the compass adjuster



n doing his work makes certain data and certain notes, and that the actual original resulting from [716] the compass adjuster's observations is in the hands of the compass adjuster, or his employer, the petitioner, and that what went aboard on the ship was a tabulation or a graph resulting from the original data in the compass adjuster's hands, and in effect, instead of asking for some copy of something that we could get from the compass adjuster, what we seek is the original, which is the source from which the deviation card aboard the ship came.

With respect to item 5 we have asked for any and all instructions in effect during the month of May, 1935, prior to the stranding, issued to the master, pilot and other navigating officers of the vessel. It seems to me apparent that that is something which would naturally be allowed to us by the Court if those officers were being cross examined. It would seem perfectly apparent to me that any general instructions to these officers responsible for this ship and its navigation, issued by the petitioner, would have a bearing not only upon the condition of the ship, but petitioner's knowledge and privity with respect thereto.

Item 6 is of a similar character excepting that it deals more directly with the physical equipment on the ship. It is confined strictly to such instructions that might have been given in relation to this particular voyage. Well, that is not quite true. There is emphasis placed on that voyage. But it

does ask for other instructions with respect to the maintenance of the ship in general. That, I think might appropriately be limited by the Court to some time as the Court thinks reasonable. [717] It seems to me that the way that that is phrased there is no limitation as to the time, but there is special emphasis placed respecting the voyage resulting in that stranding.

Item No. 7 seeks, "Any and all corporate by-laws, general instructions, letters, or other documents granting, eliminating or outlining the authorities and duties of the several executive officers and representatives of petitioner, in effect prior to and on May 16, 1935."

I think what has already transpired in the courtroom is reflective of the materiality of these documents even in the Court's own mind. By cross-examination heretofore when Mr. Wilson, the vice president of the corporation and his assistant manager, Mr. McKinstry, were examined, the Court granted applications made by Mr. Ryan for the production of documents, item by item. If they are material and relevant item by item, then it would seem from the standpoint of saving delay and from the standpoint of expediting the trial they should be granted under this application, since they have to do very necessarily with the matter of responsibility on the part of the petitioner and such privity of knowledge as it might be guilty of. [718]

Mr. Summers: It would appear from a reading of Item 8 that the Government has asked for all

records, orders and bills connected with the repair, adjustment or compensation of compasses, and patently that is to check the number of times that the compass has been adjusted prior to 1933. That would indicate that the Government desires to know who, in relation to the Petitioner, had placed the orders, who was the one with whom the compass adjuster dealt, whether with an officer of the ship or the vice-president of the corporation, Mr. Murphy, or somebody else. In other words, it goes directly, I think, to privity of knowledge, and also to checking such records as might be shown by the deviation cards themselves.

Item 9 asks for all communications, reports or copies thereof, made by and between the master, pilot and officers of the steamship "Denali" relative to her stranding and ultimate loss, and under (a) "Officers or other representatives of the Petitioner," and (b) "Underwriters or other representatives with reference to, or in explanation of the stranding of the steamship "Denali" on May 19, 1935, or any proof of loss resulting from such stranding." And under (c), "Any and all Governmental Boards, Bureaus, Commissions, Agencies or Authorities, relative to the stranding of the steamship 'Denali' on May 19, 1935." I see nothing in here as suggested by counsel in discussion of this item on previous argument, which is even suggestive that the Government is asking for any privileged communications. It is not asking for any communication made to counsel. It is not [719] asking for

any communication made in preparation for trial but if so then I would acquiesce in the limitation of the demand. But it is asking that those things those reports, those communications, coming from various parties, dealing with this ship and its condition, and this disaster, reflective of the true facts be disclosed to this Court.

I am frank to say that I do not have at my tongue's end the citation of the case which I have in mind to the effect that such matters are not privileged and may be demanded by a claimant, or by a litigant. They are not in the nature of privileged communications, and some of them, I submit, might be in the nature of admissions made as a part of the *res gestae*.

Item 10 asks for all communications, reports, or copies thereof, made by Petitioner, or its representatives, relative to the stranding and ultimate loss of the "Denali". First, underwriters; and, second, governmental boards and bureaus.

It seems to me that statements made by the Petitioner, either to its own insurance companies or to inspectors or bureaus or authorities of the Government, required by law, not made to the attorneys for the Petitioner, are highly important. You have a number of regulations, a number of routine reports made by this company to its underwriters in proof of loss and to governmental departments. Certainly, it is consistent with justice that if those reports are different than claims that might be made by the testimony in this case in behalf of the Peti-

tioner, the Court and the Claimants are entitled [720] to that knowledge. Such reports would be made much nearer the date of the accident, and possibly might be considered by the Court as being of greater value than oral testimony two years thereafter.

The Government submits that on the merits of its application the documents requested are reasonable in regard to the matter of remoteness, and in justice the Government is entitled to the production of those documents at this time, in order to expedite the trial.

The Court: With respect especially to those communications to or from governmental boards, bureaus, commissions, agencies<sup>4</sup> or authorities, how would the applicant's right to have them be affected by the fact that it might already have copies of them, being the Government itself?

Mr. Summers: I would submit, if Your Honor please, that that is hardly justified. It was only a few days ago that certain documents were not made available by a governmental department to Judge Cushman, by virtue of governmental regulations. Your Honor's suggestion might be well taken if it were to be conceded by counsel that Claimants have already a copy of so-and-so, and we would have to acquiesce, I think, that we were not entitled to it if we already had a copy, we would not be entitled to another like copy. Perhaps Mr. Dennis is more familiar with that than I, but I doubt very much if the rule would justify that, particularly in view of



the number of departments of the Government, and in view of the limitation of disclosure by governmental departments, and in view of the fact that the rule is not wholly for the benefit of the Claimants. The rule is at least in part [721] a rule to benefit this Court and expedite this trial.

The Court: I will hear from you, Mr. Bogle.

Mr. Bogle: If the Court please, I have very little further to say on this matter. Substantially the same question was argued a week or ten days ago by the same counsel, the same argument, and the Court ruled upon the matter, and an order was entered so far as the Pacific Coast Coal Company is concerned. Now, the same counsel presents an argument and motion on behalf of another party to the same litigation.

Mr. Summers: In that connection, if Your Honor please, I would like the record to show just one fact. Mr. Pellegrini was prepared to try this case on behalf of the Government, but he is before the Grand Jury in Tacoma and is not in attendance on the trial.

Mr. Bogle: I think the record shows that. The second point, if Your Honor please, I think, is an application for discovery of documents under Rule 32, and under the wording of the rule itself that comes too late in the course of the trial.

Taking up the particular items that are referred to here, Items 1 and 2, deck and engine room logs. At the previous hearing Your Honor ordered that we furnish them the same information for the voy-



age upon which the vessel was lost. That has been furnished. If those documents they ask for are in existence we have no objection to producing those, by agreement.

The third request is essentially information which the Petitioner will have to produce in connection with its own case. It certainly has nothing whatsoever to do [722] with the issue of the Claimants. The production of that information at the present time, back for the entire year 1934, would require a considerable amount of clerical effort.

As to Item No. 4, there is an affidavit on file, referring to compass deviation cards and the azimuth books, that they were lost with the vessel and are not now in existence. So Item No. 4 of the request is that the Petitioner furnish information which is not in its possession, but is information which may be in the possession of an entirely third party, an independent third party, an independent compass adjuster. I doubt if Mr. Ryan, with his twenty years of experience, has ever had a court order a party to produce evidence in the hands of an entirely third party which is easily accessible by subpoena duces tecum.

The Court: Well, that rule, Mr. Bogle, says in his possession or power.

Mr. Bogle: It is not in our power; it is in the hands of a separate corporation.

The Court: I mean that the limitation of the right to have it is because it is in the possession or

power, relating to any matter or question in issue.

Mr. Bogle: As I said, that is in the possession of an entirely third party. As Judge Neterer held in the "Princess Sophia" case, information in the hands of a third party, or which is accessible to either party by subpoena duces tecum, certainly cannot be required to be produced. That came up upon motion at the time of trial, during the trial.

[723]

Now, the 5th and 6th demands clearly relate solely to the issue of the petitioner's privity of knowledge. It is true that the preamble to this demand is a preamble for the production of all papers within its possession or in the possession of any third party subject to the control of the Petitioner, relating to any matter or question at issue in the above-entitled case. I do not think any court has ever held, if Your Honor please, that a party to a case in admiralty is required to produce documents which have no bearing upon the issue of the party asking for the production, if they solely relate to the issue of the party who has them in its possession and so not relate to any issue raised by the opposing party. I do not think any court has ever required that they be produced for examination of a third party.

As Judge Neterer said in the case Mr. Long read to Your Honor, that is purely a fishing expedition.

As to No. 7, we have no objection, independent of this demand, to producing the corporate charter and by-laws, and we have already produced the instruc-

ions relating to and outlining the authority and duties of the departments which are material in this case, that is, the repair and maintenance department, and the duties of the transportation department.

No. 8 relates to the seaworthiness of the ship. That is a matter under the limitation issue of privity of knowledge.

As to No. 9, I think sub-paragraph (a) of No. 9, reports made by the officers to the representative of [724] the Petitioner—I know of no such report, but if there was one I think it would be clearly a privileged document.

The next is reports to underwriters or other representatives. I do not quite understand what it means. I do not know what representatives would be referred to. I know of no such reports, but it seems to me that that is clearly immaterial. The only purpose of that, I assume, would be to try to impeach one of the officers, the master, pilot or one of the officers of the ship. If that is the purpose of it, then I think it could very properly come up in the examination, if it is for the purpose of impeachment.

Sub-section (c) relates to a type of document which is, as such, accessible to the Claimants as well as to the Petitioner. If any reports were made to a governmental board that would be the situation. The only one I know of would be to the United States Inspectors, of which they have a copy. That can be procured by them just as well as by us.

As I read No. 10, it would cover all correspondence between the Legal Department and the Underwriters, and if they want that, then in my opinion the question of the liability in this case, the details as to the facts, with which we always accompany the statements of all the witnesses—I hardly think any Court would order us to produce that. But I can assure counsel that there is nothing in it that we would not be very glad to show them.

Under sub-heading (b), Governmental records, they are as easily accessible to the Claimants as they are to [725] the Petitioner.

The Court: Does counsel on either side wish to call the Court's attention to any authority, any decided case or statute, relating to (a)?

Mr. Bogle: Which one, Your Honor?

The Court: That is No. 9, sub-paragraph (a), communications between the master and officers or other representatives of the Petitioner, relating to the stranding.

Mr. Bogle: Frankly, Your Honor, I haven't had a chance to brief this matter. Here we have had a case pending for two years, and they come in on the day before trial, when we are assembling our witnesses, and produce this document. I had assumed that the same question had already been passed upon. I have not briefed the various items of this as I would if it came up even on the three days' notice. I have had no opportunity to brief it.

The Court: Do you have some specific authority touching on this?

Mr. Ryan: Yes; in this memorandum that we filed just at lunch time, "Adelphi", 1935, A. M. C., 469, at page 3 of the memorandum.

The Court: On the third sheet?

Mr. Ryan: Yes. It was applied by Judge Campbell.

The Court: Judge Campbell, however, allowed the requested information in that case only with respect to the engineer's report, made in the ordinary course of his duties, without reference to the stranding or any report concerning the stranding—wasn't that what was allowed?—and denied it with respect to all other matters sought?

Mr. Long: That is correct, Your Honor. [726]

Mr. Bogle: That is right. It would be the reports made in the ordinary course of business.

The Court: And not touching any matter occurring at or after the stranding.

Mr. Bogle: I am not so sure about that, but I think Your Honor is correct.

The Court: The Court now first rules as to these demands pending for the production of documents on the trial, that these demands, and each and all of them be and the same are hereby denied.

With respect to this application for discovery of documents, which application is made and has just been heard and reconsidered by the Court, and the Court being advised that that application was filed before the trial, and the hearing thereon was continued until this day, in the forenoon thereof, and the Court having by previous ruling last made



touching this matter set aside and vacated the ruling on it made earlier on this day, does now rule as follows, with respect to that application.

Sub-paragraph No. 1 is granted.

As to sub-paragraph No. 2, the application is granted, it being conditioned by the Court that the granting is upon the terms and conditions stated in Admiralty Rule No. 32, and in each instance is granted so far as any documents which are or have been in the possession or power of the Petitioner, Alaska Steamship Company, relating to the matters here in suit, and more particularly dealt with in each item.

Paragraph 3, as to the documents, requisitions, reports, etc., sought for discovery in paragraph, the [727] application is granted, it being confined to the year 1934.

As to paragraph 4, the application as applied to the years 1933, 1934 and 1935, up to and including May 19, 1935, only, the same is granted, but that application as to that paragraph 4 is denied as to all years prior to 1933.

Paragraph 5 is granted.

Paragraph 6 is granted.

Mr. Bogle: Does Your Honor understand that that includes every vessel in the fleet, 19 vessels?

The Court: Yes, I do, by reason of what was made to appear in the argument, that it is desired to compare the instructions given to this vessel with the instructions generally given, if any?

Mr. Bogle: It will take us two weeks to get that.



The Court: The Court has not yet fixed the time that you have in which to do this. Paragraph 7 contains one word which is a typographical error, contained in line 11, as the lines are numbered on this page 2 of the application. The word "eliminated" is clearly meant to be understood as "limiting", and with the word so understood by the Court paragraph 7 is granted. That is, it is granted so far as those things are concerned which were in effect on May 16, 1935. It should not take into account any such things on any prior dates, or at any prior times, because there may have been changes made before that time.

Paragraph 8 is granted as to the year 1933, only.

Paragraphs 9 and 10 denied, because the Court is [728] advised that all of the information sought there relates to occurrences at and subsequent to the time of the stranding.

Is there any item which is not properly so classified? And for the further reason that some of it relates to information which may be already in the possession of the Government of the United States.

Mr. Summers: I did not hear Your Honor's last remark.

The Court: And for the further reason that some of it relates to information which might very properly now be already in the possession of the United States.

Mr. Summers: I think, Your Honor, that both paragraphs 9 and 10 do relate to such matters. They relate to the stranding. However, I have this one

thought for Your Honor's consideration in limiting that ruling; whether or not Your Honor might wish to require the discovery of such documents or communications as Your Honor could construe to be a part of the *res gestae*. I have reference now to radio messages that might have been sent by the officers or master of the vessel to the Petitioner immediately after the occurrence.

The Court: A radio message might very properly be in the same situation as a letter. It takes the operation of a mind, and deliberation, to frame a radio message, the same as would be the case in reference to a letter. If it were an oral statement or exclamation made by the master at the time of the stranding, or at the first opportunity, after the wreck cleared away, or when somebody got there, that might be another thing. The rule will stand as to paragraph 9 and paragraph 10. [729]

Mr. Bogle: If Your Honor please, so that I will know how to go about trying to supply this information—

The Court: With respect to the time?

Mr. Bogle: That is what I want to take up. No. 5 says, "Any and all instructions in effect during the month of May, 1936, prior to May 19, 1935, issued to the master, pilot and navigating officers of the steamship 'Denali'." That is a very broad statement. It would include matters relating to cargo, matters relating to shifting, and movements in the harbor.

The Court: Which item is that?

Mr. Bogle: No. 5. I do not know how many there are, but is there any limitation upon those instructions? And is it a written instruction that is called for, or does this demand call for oral instructions? I would imagine that a great deal of the detail of the instructions would be oral.

The Court: It is not limited, and I do not see why, in view of the short time covered, the month of May prior to May 19th—I do not see why it would not be reasonable to give both the written and oral instructions, if any.

Mr. Bogle: Without limitation as to what the conversation might relate to? It says “Any and all instructions.”—it doesn’t say relating to anything.

The Court: It refers to the navigating officers of the steamship, relating to the navigation or movement of the steamship “Denali”. It may be so conditioned.

Mr. Bogle: No. 6. It says “All instructions as to the maintenance of vessels in general.” I want to be clear whether that means a general instruction, or whether it means [730] that we are to produce all of the requisitions and requests as to repairs or maintenance work that was done upon all of the vessels.

The Court: The Court is inclined to confine that in the second alternative, to the steamship “Denali”, but before doing so will hear if there is anything further from opposing counsel on that.

Mr. Summers: If Your Honor please, I think it was the intention—I am not certain, because Mr.

Pellegrini is not here—I think it was the intention of Item No. 6 to ask for all general instructions as to the maintenance of the vessel, and for instructions as to the maintenance of the “Denali” in particular. In other words, I do not interpret that as asking for all of the detailed instructions for the fleet as of that period, but for all general policy instructions with respect to vessels generally, and all instructions with respect to the maintenance of this particular vessel in particular. I think if it is so construed by Your Honor it will not be an excess of work upon the Petitioner.

Mr. Bogle: The words you do not have in mind there, under that phraseology, you expect us to furnish you with all the requisitions for maintenance work on all the vessels of this fleet for the month of May?

The Court: General instructions relating to the entire fleet, relating to the maintenance of the entire fleet.

Mr. Summers: Effective at that time.

The Court: And those instructions relating specifically to the “Denali”, in effect on May 16th. So confined the paragraph will be granted. [731]

Mr. Bogle: That will be all general oral or written instructions?

The Court: Relating to the fleet generally.

Mr. Bogle: Yes.

The Court: And also those oral and written instructions relating to maintenance.

Mr. Summers: If Your Honor please, I would concede this further limitation, that it be limited to written instructions. In other words, I presume that the Petitioner will have witnesses here for cross-examination.

The Court: As to the oral instructions; and also you would agree, I presume, to the same limitation in the preceding paragraph 5?

Mr. Summers: Yes, Your Honor.

Mr. Bogle: I think that by this type of oral—

The Court: Written, only in No. 5 and No. 6.

Mr. Bogle: Anything that was oral could not be produced for their inspection.

The Court: Yes, that is right. Written is meant and understood as regards to paragraphs 5 and 6.

Mr. Bogle: Now, No. 8. I am in a little doubt as to what extent Your Honor granted that.

The Court: For the year 1933, only.

Mr. Bogle: The year 1933, only?

The Court: And being excluded therefrom the years 1930, 1931 and 1932.

Mr. Bogle: Your Honor will allow us an exception to your ruling?

The Court: An exception noted and allowed.

Mr. Bogle: Now, as to the time; it is very difficult for me [732] to even suggest to Your Honor whether this will take a short time or a considerable length of time. I will have to confer with the gentlemen who will have to compile this information. I would suggest that we leave the time until, say, tomorrow morning, until I can find out how



long it will take, or, I would say, make it a week's time, when we can probably comply with it.

Mr. Summers: Will Your Honor hear me for a moment as to the time on that?

The Court: Yes.

Mr. Summers: With respect to the data requested for Claimants in relation to the compasses, the compass adjustment dates, application was made some time ago to the compass adjuster, who said that they would be available on the order of the Alaska Steamship Company.

Mr. Bogle: What was that, Mr. Summers?

The Court: Will you preface your remarks again?

Mr. Bogle: I didn't hear that.

The Court: Will you preface that again.

Mr. Summers: I will ask the reporter to read my statement. (Statement read.)

Mr. Bogle: You mean application by the Claimants?

Mr. Summers: Application to whom?

Mr. Bogle: You said an application was made.

Mr. Summers: I mean that request was made of the compass adjuster to permit an inspection of the data in his hands, and he refused, and he said it could be obtained on the application of the Alaska Steamship Company. I am only suggesting this, that perhaps there would be a different time fixed by the Court as to some of these items. Some of [733] the items, I apprehend, might take longer for the Petitioner to gather, and some of them, un-



oubtedly, the Petitioner has already gathered for his own use in connection with the trial, and such items as the compass adjustment data might be well available earlier than some other information that the Court has required the Petitioner to disclose. Therefore, I am only suggesting that material as may be obtained readily be required by the Court to be produced readily, with time being granted in cases where time may actually be required in assembling the data.

The Court: Mr. Bogle, if the Court took a recess in the proceedings for the remainder of this day, about this time, would that enable you to make a return on this matter tomorrow morning at the beginning of the session?

Mr. Bogle: I doubt if that would help very much, Your Honor. I can say this with reference to the compass records, which I assume is what they want—and the suggestion I made this morning that we would secure—we will have the compass adjuster prepare a copy of the exact record which was on the “Denali” at the time she was lost. Counsel seemed to misunderstand my purpose, but my purpose is simply this—and I assume that is what Your Honor had in mind—my thought would be to supply the information which was on the vessel, or which was in the possession of or within the knowledge of the Petitioner. The compass adjuster may have information that was never in the possession of the Petitioner at all.

The Court: I can only refer, Mr. Bogle, in response to what you say, to what I did before, the terms of the [734] ruling. If the petitioner hasn't had that material in its possession or control, and doesn't have it now, the Petitioner will not have to produce it for the discovery which is ordered. As a matter of fact, that should be stated.

Mr. Bogle: The Petitioner has never had it.

The Court: That should be a verified statement.

Mr. Bogle: The original cards were lost, the deviation cards were lost, and the Petitioner has never had them in its possession, except recently in connection with this trial, any information in the hands of the compass adjusters. We do not have that information now, but we can get it from the compass adjuster, but I assume what Your Honor had in mind was what would be material was what the Petitioner had before this disaster, the knowledge that it had, or the information that was in the hands of the ship or the Petitioner prior to the disaster.

The Court: I do not think at this time that any ruling is required, Mr. Bogle, except to refer to the terms of this rule.

Mr. Bogle: Well, I am prepared to hand them to the Claimants, all the information that was in our possession prior to the happening of this disaster.

The Court: Relating to compasses, deviation cards, and all the records relating to compasses?

Mr. Bogle: That is right.

Mr. Summers: We have no objection, of course, to receiving anything from counsel. In fact, we have rather requested it. But we might not be willing to accept that as all of the data that Your Honor has given us on the [735] order, until we receive a final showing from the Petitioner as to its possession and control.

The Court: Then at least the Court may consider the statement of counsel for the Petitioner as being responsive to the question as to how much time you need. Can you conform to the requirements of the order in respect to the past records by tomorrow morning.

Mr. Bogle: I could telephone to the compass adjuster and ask them to come up here with his records now. I would like to make a little progress.

Mr. Summers: Out of consideration for the difficulties into which the Petitioner finds itself placed, and to avoid unnecessary waste of time of the Court, I would suggest that the Court adjourn until ten o'clock tomorrow morning. That motion was made also for this reason, Your Honor asked from the Claimants a trial memorandum, and we would like to comply with that request of the Court. That would give us some time in which to meet that desire of the Court.

The Court: The Court is going to continue the matter of fixing the time. [736]

The Court: The Court is going to continue the matter fixing this time until tomorrow's session. It may be that at that time you may be in a better

position to tell how long you think will be necessary to reasonably supply it.

Mr. Bogle: Yes, I will be in a better position. As far as the compass information is concerned, I say, you have got to get it from the adjuster. We can get that at any time from him.

The Court: The Court further orders, through the granting of this portion of the application which the Court did grant; that all claimants have the benefit of such discovery as the Court has ordered upon the application of the United States.

The Court denies at this time the motion for an order requiring the production of documents, which was filed October 20, 1937, in all respects not already covered by the Court's order allowing in part the application for discovery.

Is there pending before the Court anything with respect to which the Court has not made a ruling?

Mr. Ryan: Yes, I think so. The documents that were referred to by the two witnesses who are technically now on the stand and demand for the production of which was made. I think that was submitted to Your Honor, was it not?

The Court: Do opposing counsel wish to be heard on that?

Mr. Bogle: Only to this extent. I would not want to be heard, but I would like to hear what the documents are that are demanded. [737]

The Court: Do you have a notation ready of those, Mr. Ryan, for the convenience of the Court and counsel?

Mr. Ryan: Yes, we have it here, but it was copied down by Mr. Bogle in each instance when the demand was made, and also it is contained in the daily transcript of the proceedings, a copy of which I am informed was delivered to Mr. Bogle at eight o'clock last night.

The Court: I have seen mention of it made in the transcript which was furnished to the Court, but I did not mark the places, and so at this time I do not know what they are.

Mr. Bogle: I got three notices, that is all, and I am prepared to proceed to give that information. One was the voyage report of the commander from the time that he——

The Court: (Interposing) Unless counsel for the petitioner shows to the Court that there is some reason why the petitioner should not be ordered to produce them at the next trial session of court, why, the Court will now dispose of the request.

Mr. Bogle: Well, I will have to check up what the request is. The only request that I know of is with reference to three matters, and I am prepared by the witness who is technically on the stand now to produce them.

The Court: Mr. Ryan, is there anything else to rule upon?

Mr. Ryan: I think not.

The Court: Mr. Wilson, will you resume the stand, then?

Mr. Bogle: I think Mr. McKinstry was the one from [738] whom you made the demand, Mr. Ryan.



The Court: There were two witnesses. Mr. Wilson has already been excused from the stand, but Mr. McKinstry has not. Strike out, Mr. Reporter what I have said about Mr. Wilson. Will Mr. McKinstry resume the stand?

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MELVIN MCKINSTRY,

resumed the stand for further examination.

The Court: Now, with reference to the documents that you requested to be produced in connection with the cross-examination of Mr. McKinstry, you may proceed, Mr. Ryan.

Mr. Ryan: They were mostly directed to Mr. Wilson and were with reference to Mr. Wilson's testimony, but they bear on Mr. McKinstry because he was acting in Mr. Wilson's stead.

Mr. Bogle: I might expedite it a little, Mr. Ryan, by saying that I understand the first notice was a demand for the reports from date of company adjustment until the present date.

Mr. Ryan: I will read into the record the references that I made yesterday for the production of documents during the examination of the witnesses. I am reading now from the transcript of the record, page 62, line 26, relative to petitioner's Exhibit with respect to data concerning the personnel; page 79, lines 1 to 5; 23 and 24, records of the adjustments of the "Denali" compasses; page 79, line 2 of the transcript of record; page 83, line 29, [739



Testimony of Melvin McKinstry.)

and page 84, lines 1 and 2, the order putting the "Denali" into commission; page 88 line 4, advertisements published of the "Denali's" sailing dates, and so forth; page 88 of the transcript, line 8, notices sent to shippers—notice of sailing dates; page 89, line 11; page 94, line 10; page 94, lines 19 and 20, first, voyage reports since the compasses were adjusted and, second, the letters of conditions concerning the voyage. I think it is somewhat in more detail in the record. Page 94 of the transcript, line 3, the abstracts of the log books; page 96, lines 1 and 3, and page 96, lines 8 to 11, lists of the charts furnished to the "Denali", and the records showing such furnishing and the date; page 96 of the transcript, line 30, and page 97, lines 1 to 5, the same; page 98 of the transcript, lines 4 to 12 and lines 24 and 25, list of winter sailings, 1933-1934 and 1934-1935; pages 104 and 105 of the transcript, deviation books, azimuth books and the old log books that were referred to there.

Mr. Court: Now, will you advise the Court what you wish produced in connection with the testimony of this witness?

Mr. Ryan: I would like those documents produced that I have just read, that are described in detail on those pages and lines of the transcript.

Mr. Bogle: Your Honor has never ruled—

The Court: (Interposing) Is there any reason why they should not be produced?

Mr. Bogle: I would have to go over the list. I admit that it is so confused with the motion to

(Testimony of Melvin McKinstry.)

discover documents and the motion to produce them—well, I think [740] that most of them are in this other thing.

The Court: As I recall, Mr. Ryan, there are about three things that you asked in connection with the cross-examination of Mr. McKinstry, and also in connection with the cross-examination of Mr. Wilson. First—as I recall, there were about three kinds of documents or records which you sought. I may be wrong. I am depending upon my recollection. Is not there identified in your mind the classification of the records which you have already asked in connection with the cross-examination of witnesses that you wish to have them produced?

Mr. Ryan: I just read them to you. These are the documents demanded in connection with the testimony of these witnesses that were referred to by these witnesses and that I demanded at the time. I just read them into the record.

The Court: That was in so much detail that it is as bad as having the record read.

Mr. Ryan: I was reading it from the record so that it would be readily available to Mr. Bogle, as Mr. Bogle has had a copy of that transcript since yesterday evening.

Mr. Bogle: I have not. My office has.

Mr. Ryan: And I did not want to repeat everything.

(Testimony of Melvin McKinstry.)

The Court: Now, we have on the stand Mr. McKinstry, and as I recall it he was being cross-examined by you.

Mr. Ryan: Yes.

The Court: At the close of yesterday's session.

Mr. Ryan: Yes.

The Court: You may proceed with the cross-examination, [741] and if you desire at this time to call attention to these documents or records which you have asked for in connection with the cross-examination of this witness, I will consider that at the time.

Mr. Ryan: Yes.

### Cross-Examination

(Continued)

By Mr. Ryan:

Q. Mr. McKinstry, the documents that I have just described and which were referred to—and which were demanded in connection with the testimony of Mr. Wilson—have you any of those documents here in court?

A. Just what documents are those? That is not clear to me.

Q. The ones that I just read into the record.

A. I could not tell by what you read into the record what documents you were referring to.

Q. Well, I will—

A. (Interposing) There were only a few documents referred to when I was on the stand yesterday.

(Testimony of Melvin McKinstry.)

Q. Well, I will show you a written list of what I just read into the record.

Mr. Bogle: It does not seem to me that we are going to make much progress in that way. He is asking this witness on cross-examination if he has documents that he demanded of Mr. Wilson when he was on the stand.

The Court: Yes. That does not seem to me to be quite fair to this witness, Mr. Ryan. I wish you would recall what you asked to be produced when you were examining this witness. [742]

Mr. Ryan: I only asked him on the stand—I only examined him on the stand five minutes when you adjourned last night.

The Court: All right. Then you did not ask for any documents in connection with the cross-examination of this witness; is that right?

Mr. Ryan: That is right, as I understand it.

The Court: Well——

Mr. Ryan: (Interposing) But, Your Honor, this man acts in Mr. Wilson's stead when Mr. Wilson is away, and by coincidence that happened to be the case here at one of the important times, so that those documents, insofar as they bear on Mr. Wilson's testimony, also bear on this man's testimony.

The Court: Well, if you have not already during the course of the cross-examination of this witness asked that something be produced in connection with your cross-examination of this witness, proceed

(Testimony of Melvin McKinstry.)

with your cross-examination now of this witness without reference to those other things that you referred to.

Mr. Ryan: Yes, Your Honor.

Q. (By Mr. Ryan) There was an order issued, was there not, putting the "Denali" into commission for sailing on May 15, 1935, from Seattle for Alaskan ports.

A. Under date of May 3rd.

Q. Under date of May 3rd?

A. Under date of May 3rd, 1935.

Q. May 3, 1935?

A. Yes, sir.

Q. And before that—who issued that order?

[743]

A. I issued that order.

Q. And you signed it, did you?

A. With Mr. Wilson's name by my initials, yes, sir.

Q. Is this petitioner's Exhibit 11 what you mean by that order, or is there another order?

A. That is the letter or order, if you wish to term it that.

Q. Now, at that time had or had not—now, in your testimony yesterday—strike out that other. In your testimony yesterday you said that when you asked Mr. Murphy, the superintendent of maintenance, whether the "Denali" was in seaworthy condition in all respects for this sailing on May 15th he said that she would be. Now, I ask you did you

(Testimony of Melvin McKinstry.)

ever receive information from Mr. Murphy that the "Denali" was seaworthy in all respects for the voyage on which she sailed on May 16, 1935?

A. Not that I recall, and that would not have been necessary.

Q. In other words, you, as the acting manager of the company, issued an order putting the "Denali" into service as an operating ship to load cargo for shippers, and holding her out for passengers to go on, when you knew at the time that you had no information that she was fit to go, and the man to whom your company had delegated the broadest authority in that respect had, in answer to a question by you with reference to her fitness to go to sea—had not said that she was fit, but said that some time in the future she would be. Is that right?

Mr. Bogle: I shall object to that as being argumentative, and not a correct statement of fact or of [744] this witness' testimony.

Mr. Ryan: I think that it is a correct statement.

The Court: The objection is overruled. He may answer the question, if he can.

Mr. Bogle: Would you like to have the question read, Mr. McKinstry?

The Witness: Yes, sir. It is rather involved.

Mr. Bogle: Will you read the question, Mr. Reporter?

(Question read)

A. When I asked Mr. Murphy if the ship would be ready to go, meaning in a seaworthy condition,



(Testimony of Melvin McKinstry.)

It was not necessary that I ask him a second time after he told me that the ship would be ready to go on the date set. It was Mr. Murphy's responsibility then to see that the vessel was in a seaworthy condition, and it was not up to me to check on him a second time.

Q. (By Mr. Ryan) And you didn't think it strange that Mr. Murphy did not tell you that the ship was all right and fit to go to sea?

A. Not a bit.

Q. You did not?

A. No.

Q. I see. You thought it was all right to order her to sea without knowing that, however?

A. Certainly. That was Mr. Murphy's responsibility, to see that the ship was seaworthy, and if she had not been seaworthy he probably would have come back and said something, which he did not.

Q. But you never used any care to find out what the subsequent [745] situation was, or whether he ever afterwards found out whether she was fit or not, isn't that right?

A. It was Mr. Murphy's entire responsibility after the ship had been ordered into commission.

Q. In other words, you ordered her into commission when you knew that Mr. Murphy did not know whether she was fit at that time or not, isn't that right?

A. That was up to Mr. Murphy. He had two weeks to get the ship into commission—seaworthy

(Testimony of Melvin McKinstry.)

—if she was not, and it was not necessary that I check with him again.

Q. Now, on this question of regular and irregular service, I call your attention to this order of May 3, 1935, signed by you, Petitioner's Exhibit 11, the last paragraph of which reads as follows, "If any of those addressed have any suggestions or ideas as to how our freighters may be better utilized in this regular freighter service, would be very pleased to have you advise us". And then just above that paragraph the "Denali" is listed for regular sailings on specific dates. Now, wasn't it your—wasn't your testimony yesterday incorrect when you said that the "Denali" was not being put in regular sailings or regular service?

A. It was not incorrect.

Q. Will you please explain that order, then.

A. The testimony showed, I think, that on freighter vessels naturally you have got to set some date for the assembling of cargo. Now, this schedule was set on May 15th. The vessel sailed May 16th, as frequently occurs in freighter vessels. They are not operating on a schedule—on a positive schedule like a passenger liner. It is not [746] a question of life or death that it go upon the date that she is set to go. She can go the next day or two days afterwards.

Q. Now, what did you mean by these words, "This regular freighter service"? It is in that order signed by you.

(Testimony of Melvin McKinstry.)

A. The regular service may have been, if she got out May 16th—the next trip out may have been May 30th or May 31st.

Q. Now, let us take—let us take it just as it comes here. “S.S. Denali May 15th; S.S. Denali June 29th; S.S. Denali July 27th; S.S. Denali August 24th”. Isn’t that so?

A. So the letter says, yes, sir.

Q. Then what do you mean by your last statement?

A. I mean as I have testified, as we understand this sort of a letter and as all our officials understand it, as being approximately that date.

Q. Why did you use the words “regular service”, and give specific dates running through a period of several months?

A. That is simply a matter of using language.

Q. It is not because of anything suggested to you since this trial began?

Mr. Bogle: I object to counsel arguing—

The Court: The objection will be—

Mr. Ryan: I will withdraw that.

The Court: Very well. It is withdrawn.

Q. (By Mr. Ryan) What general instructions, if any, or did you issue any general instructions to masters of your vessels—your company? [747]

A. Did I personally?

Q. Did you or Mr. Wilson—I mean your superior?

A. For myself, no.

(Testimony of Melvin McKinstry.)

Q. Did Mr. Wilson?

A. Well, not as a rule. I have in mind that circular letter covering Mr. Murphy's duties was sent, of course, to captains.

Q. What other instructions were issued by Mr. Wilson to the masters of the vessels of the fleet—general instructions?

A. I don't recall. Probably Mr. Wilson can best testify to that.

Q. All right. Were other general instructions issued to the masters of the vessels of the fleet other than those issued under Mr. Wilson's name?

A. I might presume that some instructions were issued by Mr. Tracy, and probably also by Mr. Murphy.

Q. Where would those instructions be? Have you that?

A. No, I have not.

Q. They may be in the company's offices here?

A. Well, I presume that any instructions issued would be a part of the records.

Mr. Ryan: That is all.

The Court: Any redirect?

Mr. Bogle: Yes. [748]

### Redirect Examination

By Mr. Bogle:

Q. (By Mr. Bogle) Mr. McKinstry, when you were on the stand before there was offered in evidence as Petitioner's Exhibit 10 a letter from Mr. Baker to Mr. Wilson, and you were asked at that

(Testimony of Melvin McKinstry.)

ime to see if you could find the original of that letter, that being a copy. I will ask you if you have made a subsequent search, and if you have found the original of that letter?

A. Yes, sir. This morning I made a further search of the files and located the original letter of May 1st, signed by Mr. Baker and addressed to Mr. Wilson.

Mr. Bogle: I would like to substitute that, Your Honor, for the copy.

The Court: Do I hear any objection? There being no objection, the request is granted, and the petitioner may substitute the original for the copy already admitted and withdraw the copy. Is that satisfactory, Mr. Ryan?

Mr. Ryan: That will be perfectly all right. I would like to look at the original, however.

The Court: Yes. Eliminating the clerk's notations on the exhibit received and substituting them on the original that has been substituted therefor.

Mr. Bogle: I will let counsel compare the two before I withdraw the copy.

Mr. Ryan: That is all.

(Mr. Ryan compares the copy of the letter with the original.)

The Court: Now that it has been compared counsel [749] has no objection to that being done as previously mentioned by the Court?

Mr. Ryan: No.

Q. (By Mr. Bogle) Mr. McKinstry, did you confer with Mr. Murphy before or after receipt of

(Testimony of Melvin McKinstry.)

that letter marked Petitioner's Exhibit 10 with reference to the readiness and the seaworthiness of the "Denali" for the May 15th trip?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Which was it?

A. What is that?

Q. When did you confer with Mr. Murphy as to the seaworthiness and the readiness of the "Denali"?

A. Upon receipt of this letter.

The Court: Referring to what exhibit?

The Witness: Exhibit 10.

Mr. Bogle: Exhibit 10.

The Court: Very well.

Q. (By Mr. Bogle) And was that inquiry as to her then state of readiness or whether she would be ready for a May 15th sailing?

Mr. Ryan: That is objected to on the ground that that is not proper redirect examination. That very point was covered on direct examination. The witness covered it both on direct and cross-examination and, further, this is more or less leading.

The Court: The objection is overruled.

The Witness: What is the question? [750]

Mr. Bogle: Read it to him.

(Question read)

A. Well, of course I knew that she passed the inspection by the United States Steamboat In-



(Testimony of Melvin McKinstry.)

spectors. I simply asked Mr. Murphy if the "Denali" would be in shape—would be seaworthy to leave approximately May 15th, knowing that freighters were not on any ironclad schedule, and that it depended upon the assembling of cargo and the amount of time required to load the vessel.

The Court: That is sufficient. Propound another question.

Mr. Bogle: My notes would indicate, if Your Honor please, that Mr. Ryan asked this particular witness for the—

The Court: (Interposing) Mr. Bogle, I made that direction to the witness as I thought that the witness was continuing to volunteer some information not responsive to your question.

Mr. Bogle: I understood that. I was just about to go over certain information which Mr. Ryan demanded. My records show, Mr. Ryan, that you demanded of this witness the so-called winter sailing schedules of 1933-1934 and 1934-1935.

Mr. Ryan: That was of Mr. Wilson.

Mr. Bogle: Well, have you any objection to having it from this witness?

Mr. Ryan: Well, I would like to keep that all together. This man apparently had not authority when Mr. Wilson was there.

Mr. Bogle: Very well. That is all. [751]

The Court: You may be excused.

Mr. Ryan: Just a minute, if Your Honor please.

(Testimony of Melvin McKinstry.)

Recross Examination

By Mr. Ryan:

Q. In view of that last question and answer I would like to ask you this, Mr. McKinstry. You have just referred to a schedule of sailings of the freighters sent out to shippers. Did you send those out?

A. No, sir.

Q. Did you have anything to do with sending them out?

A. No, sir.

Q. Then how do you know anything about the dates that were on there—whether they were fixed or not, or whether the shippers were promised a certain date of sailing, or not?

A. I never testified that the shippers were promised any—

Q. (Interposing) I see.

A. (Continuing) —any date of shipment.

Q. You don't know anything about that of your own knowledge at all?

A. I don't know anything about what of my own knowledge?

Q. Whether or not those schedules as sent out by somebody else in the office were fixed dates which had been agreed with the shippers of the cargo or not; do you?

A. No, I do not.

Q. You do not?

A. No.

(Testimony of Melvin McKinstry.)

Q. Do you know the extent of the United States Inspectors investigation—inspection of a vessel?

[752]

A. No. It was not even within my jurisdiction to know.

Q. It does not cover navigation equipment at all, does it, or whether the compasses have been adjusted, or whether there has been any swinging of them, does it?

Mr. Bogle: He said that he didn't know. It is useless to proceed with that question.

The Court: I think the cross-examination is not proper in view of his answer when he said that he didn't know anything about the scope of it.

Q. (By Mr. Ryan) Well, if you don't know anything about the scope of it, why did you rely on it to any extent?

Mr. Bogle: I submit that that is argumentative, Your Honor.

The Court: The objection is sustained. You may step down now, Mr. McKinstry. Call your next witness.

(Witness excused)

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The Court: Do you wish to recall Mr. Wilson so as to finish his cross-examination?

Mr. Ryan: If counsel is producing those documents that he had, I would like to have those documents and examine them a little, and then cross-

examine Mr. Wilson, but handing me the witness at the same time that the documents are given to me in a bunch is going to delay the examination because I will have to have the documents and examine them first. Have you the documents?

Mr. Bogle: I have some of them.

The Court: Let Mr. Wilson be called to the stand. [753]

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THOMAS B. WILSON,

recalled as a witness on behalf of Petitioner, having been previously duly sworn, testified as follows:

The Witness: Your Honor, I would like to correct one of my answers that I gave yesterday.

The Court: Just a moment. Counsel on both sides will give attention. The witness has requested the correction of an answer which he gave yesterday. The Court now gives that leave, and you can speak of it now, Mr. Wilson.

The Witness: I was asked yesterday where the log books and azimuth books were filed. That is pretty remote from my duties and attention as vice-president and general manager. I made the statement, as I remember, that I believed that they were filed in the dock office of the transportation department. I checked that up last night, not realizing that I didn't know positively, and I find that invariably they have always been filed aboard ship as to all ships. That was followed by the question as to where were the deviation cards filed, and I

(Testimony of Thomas B. Wilson.)

said that I didn't know. I think Your Honor will recall that as you helped me to straighten out my answer. That was all.

Mr. Ryan: Well, if the Court please, in view of the fact that the witness in substance is saying now that he does not know, and it is something that he has acquired by hearsay, I prefer that those facts be shown by proper witnesses who have knowledge. I mean, that I do not object to his testimony of saying that he did not know or he does not know.

The Court: There seems to be nothing before the [754] Court by your statement, Mr. Ryan.

Mr. Ryan: Well, I move to strike out the part of the answer which is based purely on hearsay acquired by the witness since he was on the stand yesterday afternoon.

The Court: You may inquire, if you wish. The Court is unable to grant the motion so far as now appears before the Court. You may cross-examine him touching the source of his information which enables him to so correct his answer.

### Cross-Examination

(Continued)

By Mr. Ryan:

Q. Who told you that this—about this last night that you did not know about yesterday afternoon when you were examined?

A. I checked that with the——

Q. (Interposing) Who did you ask?

(Testimony of Thomas B. Wilson.)

A. I checked that with the superintendent of operations.

Q. You asked him and then he told you, is that it?

A. Yes, sir.

Mr. Ryan: I now move to strike out the answer on the ground of hearsay.

Q. (By Mr. Ryan) And that is what you base the change on?

A. Yes. He is the man in charge of that.

Q. Have you any knowledge of yourself on that subject—any personal knowledge of your own?

A. No, I didn't go and examine the record rooms, if that is what you mean, but I do recall now that I have seen these [755] old log books on the ships, filed in the bottom of the chart rooms there in the cabinet.

Mr. Ryan: Naturally, I have not any objection to the witness changing today any testimony that he gave yesterday when he thought that he knew and then later found out that he did not know. In other words, he can come in now and say, "I didn't know", and "I don't know". But all that I object to, and what I move to strike out now is that part of his answer——

The Court: (Interposing) Any part of the answer based upon what the superintendent told him is stricken.

Mr. Long: I would like to be heard on that. I think the general manager of a company is entitled to inquire of his employee.



Festimony of Thomas B. Wilson.)

The Court: There are other parts of the answer which explained and modified the answer which the witness gave yesterday, and that part of the record may now stand. Any further cross-examination of this witness?

Q. (By Mr. Ryan) I ask you now to produce the documents that I demanded of you yesterday afternoon.

A. Well, I recall that you demanded the winter schedules for the years 1933 and 1934 which I stated were checked separately. I have them here to hand to you (handing documents to Mr. Ryan).

The Court: I will give you an opportunity now, Mr. Ryan, to inspect those documents.

Mr. Ryan: Yes, Your Honor. Well, there are quite a few others as well.

The Court: Very well. [756]

Q. (By Mr. Ryan) Will you produce the other documents?

Mr. Bogle: I would like to have those marked so that we can proceed in an orderly fashion.

Mr. Ryan: Well, I just did not want to encumber the record with a lot of unnecessary things. We may not want to——

The Court: (Interposing) Let the record show that the records will be hereafter accounted for and identified, and if you wish to withdraw them later, you may do so.

Mr. Bogle: Could not they be marked for identification so that they will be in the custody of the clerk as a part of the record?

(Testimony of Thomas B. Wilson.)

Mr. Ryan: I ask that all documents that he produces now be marked as Claimants' Exhibit 1 for identification. I just did not want to have to make——

The Court: (Interposing) They will be marked as Claimants' A-1 for identification.

(Documents marked for identification  
Claimants' Exhibit A-1.)

The Witness: The next documents that I recalled you asked me for were a voyage or commander's report, a copy of which I stated came to me. I have them in my hand, ready to deliver them to you, beginning with the voyage starting July 21, 1933, which is the one preceding the compass adjustment—or succeeding, rather—after the compass adjustment, and up to the last voyage in 1934.

Mr. Bogle: May we have those marked?

Mr. Ryan: They are all being marked as one exhibit. [757]

The Court: Now, does the clerk have them all?

The Clerk: I haven't got those.

The Court: Mr. Bogle, will you and Mr. Ryan see that all which have been mentioned and delivered by the witness or through the witness' hands be gotten together?

Mr. Ryan: Yes. They are all being kept right here, and they will all be marked Claimants' A-1 for identification.

The Court: You should not leave it to the clerk to get them together. They should be gotten together by you and handed to the clerk.

(Testimony of Thomas B. Wilson.)

Mr. Ryan: Yes, Your Honor.

Mr. Bogle: Now, how about this one (handing document to witness)?

The Witness: This is a statement of the charts ordered for the Steamship "Denali".

Mr. Ryan: That will go in the same exhibit.

Mr. Bogle: That is the only record that I have of your demands, Mr. Ryan. If the reporter will give me a transcript of the additional demands that you read off—read off today, and I think they are proper, I will submit them in the morning, or if they are not, I will argue the matter to the Court. The Court has never ruled on any of these demands. The Court reserved the ruling until after this hearing on this matter of discovery.

The Court: Yes.

Mr. Ryan: I made no demand today. I merely referred to the pages and lines in the record where I made demand in the record, and you have had that record since [758] eight o'clock last night.

Mr. Bogle: I have not had it. There is no use saying that. At eight o'clock last night I was at home.

The Court: I do not like these side remarks. Both counsel appreciate the wisdom of counsel making their remarks to the Court insofar as advising the Court with respect to their objections and making rulings thereon, but side remarks are conducive of delay and will do no good. For that reason both

(Testimony of Thomas B. Wilson.)

counsel will kindly refrain from doing that in the future.

Mr. Bogle: I will get, if Your Honor please from the record the additional demands made by counsel, and insofar as we can we will try to supply them.

The Court: Yes, I think that is desirable.

Mr. Bogle: And have a ruling on them if we do not think that they are proper.

Mr. Ryan: That would mean that this witness would have to be held by Court order until they are produced then.

The Court: Well, can you proceed now with any examination?

Mr. Ryan: I can examine him on these three that have just been produced.

The Court: Will you do that, if you please?

Mr. Ryan: Yes.

Q. (By Mr. Ryan) When was this list of charts prepared that you have just handed me?

A. I don't know.

Q. Well, it has obviously just been typed out, hasn't it, [759] look at it. (Handing documents to witness)

A. I see it is typed.

Q. Yes, but is it not a new copy—practically new typewriting?

A. It appears to be. It is a list of charts.

Q. Well, where are the records of your company showing the charts that were supplied to the "Den-

(Testimony of Thomas B. Wilson.)

ai", and the dates on which they were supplied, and the numbers?

A. I presume that is taken from Mr. Murphy's records.

Q. I see. It is something taken from the records, and not the records themselves?

A. I don't know.

Mr. Ryan: Well, I asked for the records themselves.

Mr. Bogle: You asked for a list of charts furnished the "Denali". Now, this witness, as I said at the time, had no jurisdiction over them, but counsel insisted upon the demand. I admit that this witness did not prepare the statement, as it does not come under his jurisdiction. It merely emphasizes the difficulty that I have been trying to point out.

The Court: You may make further inquiry and the Court will rule upon it then.

Mr. Ryan: I earnestly press that particular demand.

The Court: At this particular time?

Mr. Ryan: No, not at this particular time.

The Court: You may proceed. Perhaps co-counsel will help you in keeping track of the insufficiency of the production or offer.

Q. (By Mr. Ryan) This list of charts that you have handed me refers to N. W. invoices of various numbers, does it not? [760]

A. Yes, I observe that.

(Testimony of Thomas B. Wilson.)

Q. I ask you to produce those invoices.

A. I have not them to produce.

Q. It also refers to Req. certain numbers. What does that mean?

A. Well, my guess is that that means requisition, if you want my guess.

Q. I ask you to produce them.

A. I haven't got them.

Mr. Ryan: If the Court please, I ask that the petitioner produce those invoices and requisitions as referred to on this list that has just been prepared, and I also ask that the dates on which these various charts were supplied be given. That is what I want to get at, is the charts which were actually on board the "Denali" when she sailed on May 16, 1935, on this voyage, and the dates on which each of those charts were supplied, and the number of the charts. I want—that is what—

[761]

Q. (By Mr. Ryan) Do you know whether all of these charts were on board the "Denali" when she sailed, or not, of your own knowledge?

A. No. I made that clear the other day. I do not believe you could expect me, as vice-president, to be checking the charts on the various ships that were sailing, when that amounted to one hundred and fifty odd voyages in a year.

Q. But you did not personally prepare this list, did you?

A. No, sir.



(Testimony of Thomas B. Wilson.)

Q. Are those records in existence?

A. I cannot answer; I do not know.

Q. Well, they must be or this couldn't be prepared, isn't that so?

A. I do not know.

Q. Well, you testified a little while ago that this was evidently prepared from the records of the company, isn't that right?

A. Prepared from some records, but I do not know what records you particularly refer to.

Q. I say, you do not know where this list was prepared, or what it was prepared from what you just produced in response to my demand?

A. It was prepared in the maintenance department, but from what I cannot tell you.

Q. Those invoices that are referred to, they would be in what department of your company?

A. They would be in the maintenance department.

Q. And these requisitions would be in what department, that are referred to? [762]

A. In the same department, because questions of charts came in that department.

Mr. Ryan: I will ask that they be produced.

The Court: Counsel for the Claimants is calling upon the Petitioner, as I understand, to produce those.

Mr. Ryan: Yes, Your Honor. Now, just so we will narrow this and confine it to just what is material here, what I want is the list of the charts

(Testimony of Thomas B. Wilson.)

which were actually on board the "Denali" when she sailed on May 16, 1935, the numbers of each of those charts, the date on which they were supplied and the company's record showing that date, and the invoice showing that date. None of those things is in this.

Mr. Bogle: It is on there, Mr. Ryan.

Mr. Ryan: The witness says he has no knowledge on the subject at all.

Mr. Bogle: I admit that it is not properly proven.

The Court: The Court is going to leave a little time for the consideration of the Petitioner's objections, if any, to these various matters where counsel for the Claimants have demanded that certain things be produced, in the course of his cross-examination, and you may be excused from the stand at this time, Mr. Wilson.

(Witness excused.)

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The Court: Now, gentlemen, do you have any suggestions?

Mr. Ryan: May I examine this exhibit for a moment?

Mr. Bogle: I would prefer that the exhibit remain here.

The Court: You will have leave, in view of the objection [763] of counsel, to go into the Clerk's

office during legal hours and examine them there, unless you can get opposing counsel to waive the objection to taking them out.

Mr. Ryan: They have not been filed yet, just marked for identification. I was trying to intercept the marking of the exhibits until we could look at them over night. Will you agree that we may examine them overnight? There is a lot of fine print on here.

Mr. Bogle: You can examine the exhibit in half an hour.

Mr. Ryan: I can assure you that I could not possibly read this in half an hour. Would you consent that we look at it overnight?

Mr. Bogle: I would prefer that it remain in the custody of the Court.

The Court: The exhibits being now in the custody of the Court, having been marked for identification, they will have to remain in the custody of the Clerk, unless some arrangement can be mutually agreed upon.

Mr. Ryan: If the Court please, is a document which is only marked for identification a document which is on file?

The Court: The Court doesn't wish to order their removal or withdrawal by one counsel over the opposition of opposing counsel.

Mr. Ryan: Yes, Your Honor.

The Court: That will be true of any exhibit, whether identified or admitted. Now, gentlemen, that is it that Claimants' counsel has demanded the

production of in connection with the cross-examination which has been objected to by counsel for the Petitioner? The Court will [764] dispose of those questions now, demands for production made in the course of the examination of witnesses.

Mr. Bogle: I think there is only one thing that we can do, Your Honor, and that is to go through the record and find out what the demands are.

The Court: You have produced certain things Mr. Bogle. Are there any other documents of record that have been demanded in the course of the examination of witnesses that have not been supplied?

Mr. Ryan: Oh, yes, Your Honor; most of them have not been supplied. Only three have been supplied of this whole list that I read in the record.

The Court: Are you prepared to present them now, or do you wish to look further to see what else you need, if anything?

Mr. Ryan: I need these things that I have demanded. Most of these things are not covered, even indirectly, by any of these motions to produce. These are documents referred to by the witness on the stand.

The Court: What is the next one that has not been produced, that you have demanded in the course of your examination?

Mr. Ryan: Page 88 of the record, line 4, the advertisements published of the "Denali" sailing date.

Mr. Bogle: I cannot hear you.

Mr. Ryan: The advertisement published of the "Denali" sailing date.

The Court: You mean their original copy as printed in the newspapers?

Mr. Ryan: Yes, the one they sent out, held out to shippers and passengers as to the sailing date.

[765]

The Court: Have you any objection to supplying that if it is now in your possession, Mr. Bogle?

Mr. Bogle: I can say very definitely, Your Honor, that it is not in our possession, an advertisement in a daily newspaper. The only place it could be obtained would be from the newspaper files, which are accessible to them.

The Court: Opposing counsel advises that the petitioner is unable to comply with that demand to produce, made in the course of the trial. That enables counsel for the Claimants to offer secondary evidence, I assume. Does that meet your situation?

Mr. Ryan: I think so, Your Honor, except that I think the traffic department of the company must have this. I think Mr. Bogle must be in error on that.

The Court: On the showing made the Petitioner is discharged from further obligation until you bring to the attention of the Court some information that is contrary to that given by counsel for the Petitioner.

Mr. Ryan: All right. Now, on page 88 of the record, line 8, the notices sent out by Petitioner to the shippers of cargo, together with the published

notices of sailing dates, the copies sent out from the Petitioner's office.

The Court: Notices to shippers of what?

Mr. Ryan: Of the sailing dates. Certainly, they have their office copies of those notices that they sent out to the shippers of cargo with reference to the sailing date of the "Denali" on May 15, 1935.

The Court: Has counsel for the Petitioner any objection to producing those?

Mr. Bogle: I have no objection to producing them, but I do [766] think that it is an improper demand, when the man from the executive department has testified that he had nothing to do with that, and never saw any such thing. If there is any such thing in existence it would come from the traffic department. If Your Honor thinks it has any materiality at all we will bring the man from the traffic department.

The Court: The Court directs that they be produced if they are now in the possession of the Petitioner, anywhere in the possession of the Petitioner.

Mr. Ryan: Page 94, line 8, the abstracts of the log books that the witness testified were sent by the masters of the vessels to the Petitioner.

Mr. Bogle: That has been produced.

Mr. Ryan: Abstracts of log books, I said; not the voyage reports.

Mr. Bogle: There is no such thing. Could I put Mr. Wilson back on the stand to clear this thing up? My recollection is that he testified that this was the only report he had, or that was ever made, was the reports of the commanders.



The Court: The log books, all log books material to this action, have been ordered discovered, haven't they?

Mr. Bogle: Yes, Your Honor.

The Court: And abstracts from those log books, or summaries from the log books, if they are in existence?

Mr. Ryan: They are documents turned in to the company by the masters.

Mr. Bogle: I think what Mr. Ryan has in mind is this; he anticipates that we are going to prove, or attempt to [767] prove, that the log books were lost, and if there were any other records, such as an abstract, he wants them.

The Court: If those are in the possession of the petitioner they will be forthwith produced, or as soon as possible during the course of the trial.

Mr. Ryan: I think this with reference to the charts, that I have covered that matter by the demand I made on the record. I want the petitioner's records showing all the charts which were on board the "Denali" on May 16, 1935, including the number of each chart and the date on which each chart was supplied to the vessel.

The Court: That is, a list of those charts?

Mr. Ryan: No; I would like their records showing the delivery of those charts to the vessel, and the dates on which they were delivered. Those matters would be in existence and in their possession. I also ask for the invoices showing the dates and the numbers of the charts as delivered.

Mr. Bogle: I submit, Your Honor—

Mr. Ryan: (Interposing) Now, on page 96 of the record, when the witness was on the stand—

The Court: Which one; which witness?

Mr. Ryan: Mr. Wilson. "The list of chart supplied to the steamship 'Denali' in May, 1935, or her being ordered to sea, and the records of the company showing that those were the charts delivered to the ship by Mr. Murphy, or some other person."

The Court: The witness said he personally didn't have them—isn't that what he said?

Mr. Bogle: That is correct. [768]

Mr. Ryan: Yes.

The Court: But you called upon him and the Petitioner to produce them.

Mr. Ryan: That is right.

Mr. Bogle: Not only that, but produce them together with the number aboard the "Denali" Now, obviously, this witness, who says he doesn't have the log, and we cannot produce the log—we could produce the charts from another department, but the number of them that were aboard cannot come from this witness.

The Court: The fact that some were on board may be fairly said to have been a part of the subject matter or inquiry of this witness.

Mr. Bogle: We have given them a list, Your Honor.

The Court: Advise the Petitioner what list there is besides the list that you wish.

Mr. Ryan: As I said, the demand I made was all the records of the company showing that those were the charts delivered to the ship by Mr. Murphy or some other person. In other words, here we have a ship sailing, and she had a set of charts on board, and I want to know what were the numbers of those charts, when they were supplied to that ship, and were they on board.

The Court: The Petitioner is ordered to produce those, and that information, as early as possible; particularly, company records showing that the charts on board were those that were on board, with the other details as to those particular charts.

Mr. Bogle: If Your Honor please, that takes legal testimony.

The Court: The order will stand. [769]

Mr. Ryan: Now, pages 104 and 105 of the record, the deviation books, azimuth books, and old log books. Your Honor's other order covers that, as I recall it, the deviation books and the azimuth books.

The Court: The only question undetermined by the Court in that connection is the fixing of the time in which they have to perform the order.

Mr. Ryan: Yes; that is right, Your Honor.

The Court: So you are eliminating that at this time.

Mr. Ryan: Yes.

The Court: I will ask counsel in the case to reappear before me at the beginning of tomorrow's session of the court on the further question of fixing the time for complying with the order for discovery.

Mr. Ryan: On page 93 of the transcript of record there is an answer there of the witness, M Wilson testifying:

“A. Yes; they rendered their regular voyage reports, and also gave me a letter direct on any conditions surrounding their voyage matters of operating or traffic interest.”

I demanded the production of those letters.

The Court: Voyages?

Mr. Ryan: He has produced three here that I call voyage reports today. He says they also gave him a letter, direct.

The Court: Whose letters?

Mr. Ryan: Those were letters from the master of the vessels to Mr. Wilson, the traffic department or to the Petitioner—any officer of the Petitioner as to conditions surrounding the voyage, “matter of operating [770] or traffic interest.”

Mr. Bogle: May I get that, Your Honor? As I understand, there were no letters written——

The Court: The witness did not mention an letter.

Mr. Ryan: Yes, Your Honor. I have read his testimony. This is his testimony, page 93 of the transcript.

The Court: What was the question?

Mr. Ryan: “Did you get any other written reports from the masters with reference to the operation of the vessels, other than those abstracts of the logs, in the ordinary course?”

The Court: Is that a generalization question or is it in the plural?

Mr. Ryan: "Did you get any other written reports from the masters with reference to the operation of the vessels, other than those abstracts of the logs, in the ordinary course?"

The answer to that was: "Yes; they rendered their regular voyage reports".

You see, first was the abstract of the log, and ten voyage reports, and then he says "and also gave me a letter direct on any conditions surrounding their voyage, matters of operating or traffic interest." Then the next question was "With whom would they be filed?" And the answer was "With me. They came directly to me." I ask that they be produced. Then Mr. Bogle said "You mean for this vessel?" And I said "With reference to the 'Denali', was." That is what I want.

Mr. Bogle: With is the limitation upon that demand?

The Court: With reference to the "Denali"?

[771]

Mr. Bogle: Couldn't I have a limitation of period, whether it is ten years or one year? I suppose it would be in the same limitation upon the voyage reports?

The Court: You mean the last voyage of the "Denali", the one on which she was when she stranded?

Mr. Ryan: Wouldn't it be a good idea, as long as the last adjustment was in July, 1933, any letter that the master thought important enough to write to the vice-president of the company after July, 1933? I should think that would be quite relevant.



The Court: Is there any objection to furnishing any such letters that can be found?

Mr. Bogle: None at all, Your Honor.

The Court: Very well. Produce those at the beginning of 1933.

Mr. Ryan: This last witness, Mr. McKinstry, has produced a letter referring to putting the "Denali" in commission. Mr. Wilson said there was an order putting the "Denali" in commission, but I do not know whether Mr. Wilson would say that this letter was the order, or whether there was some other document. He probably would say the same thing Mr. McKinstry said, but I do not know that of my own knowledge.

Mr. Bogle: What was your demand?

Mr. Ryan: I demanded that he produce the order putting the "Denali" into commission, if there is any such order other than this letter that Mr. McKinstry produced. If there is, I would like to have it.

The Court: How do you classify that?

Mr. Ryan: As the order of the Petitioner putting the "Denali" into commission for this voyage. [772]

The Court: Mr. McKinstry said there wasn't any other, didn't he?

Mr. Ryan: No; he said that this letter that he wrote and signed with Mr. Wilson's name was the order, but Mr. Wilson never identified it in that way, and there might be another.

The Court: What is the date of the letter in evidence?



Mr. Ryan: That would be May 3, 1935.

The Court: And what is the exhibit number?

Mr. Ryan: Petitioner's Exhibit No. 10.

The Court: The Petitioner will produce any other records relating to that subject that may be in its possession; anything that relates to the subject of placing the "Denali" in commission, or into service, in May, 1935, other than Petitioner's Exhibit No. 10.

Mr. Ryan: On page 79 of the record I asked them to produce the records of the company showing the adjustment of compasses on the "Denali". I think that is covered by Your Honor's order on the other, merely reserving the time, the question of time as to when they should be produced, so I do not press that now.

The Court: Very well. That is left in abeyance at this time.

Mr. Ryan: Page 62 of the record, I demanded the records showing authority of the various officers and the duties of the personnel of the company under this organization that had been set up by this witness. Mr. Bogle stated this morning that he had no objection to producing the corporate by-laws and some other documents, but I am making a demand for that, and I would like to have it. Those duties could be defined in some writing. For [773] instance, if you set up an organization and add different departments—

The Court: (Interposing) You will have to be more specific than that, in view of the Court's ruling on the application for discovery, and having al-

lowed that item in that application. The Court is not going to rule upon anything now unless it is made very much more specific.

Mr. Ryan: I will make it as specific as I can, because I think it is something in addition to what is covered by the other matter, Your Honor.

The Court: The circumstances under which it arose, and your knowledge of it, as developed in the testimony.

Mr. Ryan: Here is what I have in mind; the witness on the stand, Mr. Wilson, has testified that he re-organized the company and set up a new set-up changing and defining the duties of the various officers of the company, right throughout. He has produced one letter that was written to Mr. Murphy defining his duties, and I would like any other letters.

The Court: Did he say there were some others?

Mr. Bogle: May I reply to that?

Mr. Ryan: There must be some other letters, but I do not say there were any other letters, but whether he said there were some others or not I want to be sure. I know positively that he did not say there were no other letters.

The Court: You will have to stand on what the Court has ordered in respect to discovery until you are able to advise the Court of something arising in connection [774] with the testimony, something definite that you are entitled to.

Mr. Ryan: Those letters sent out by this witness, Wilson, to the various officers of the company, de-

ning their duties, during the time that he was vice-president and general manager.

The Court: As to anything you have advised the court of, your further demand is denied.

Mr. Ryan: I think that is all, Your Honor.

The Court: At this point the Court is adjourned until ten o'clock A. M. tomorrow morning.

(Whereupon an adjournment was taken until October 21, 1937, at the hour of 10:00 o'clock A. M.) [775]

October 21, 1937,  
10:00 O'clock A. M.

The Court: You may proceed with the trial of the case.

Mr. Summers: If Your Honor please, as I understand it Your Honor expressed a desire to be reminded this morning to take up first the matter of me in connection with the production.

Mr. Bogle: That is right.

The Court: Mr. Bogle, do you have some idea on what to advise the Court of at this time?

Mr. Bogle: Yes. I am advised that probably the major portion of the information called for by the application for discovery will be available today, and I am sure that all of it will be available either tomorrow or not later than Monday, or Tuesday, which is the court day.

The Court: If the Court gave you until Tuesday as the maximum would you be willing to supply it piece-meal in the meantime, such of it as becomes available before then?

Mr. Bogle: Yes, Your Honor. Some of it will come out in the evidence before then.

The Court: And you would be quite agreeable to furnishing such of it as comes within your power to do so in the meantime, as early as you can?

Mr. Bogle: Yes, Your Honor. I am just a little concerned about No. 4, just how to proceed under it. That is in regard to records in the hands of independent compass adjusters. I would like to see if Mr. Ryan, Mr. Summers and Mr. Dennis and I can agree on some procedure to comply [265] with that.

The Court: I think, counsel, that the Court will consider that.

Mr. Bogle: The information in the hands of the adjuster with reference to the compasses of the "Denali" is contained in one book, a little office record book in which they keep all their compass adjustments in regular daily order. In that book they will have not only this adjustment of the "Denali" but they will have probably a hundred or more records as to adjustments on other ships. Naturally, that is the only record they have.

The Court: Who is "they"?

Mr. Bogle: The compass adjuster, the Northwest Instrument Company. They are rather reluctant to have that leave their possession. The suggestion was made that in company with Mr. Ryan or Mr. Summers that we go down and look at the record so far as it pertains to the "Denali", or we could have them make a photostatic copy of whatever information is contained in the book which in their judg-

ment has a bearing on this matter, so that the company may retain its original records, which they advise me is the only record they have of possibly a hundred different adjustments.

The Court: Involving vessels not only of the Alaska Steamship Company, but any vessels of their customers?

Mr. Bogle: That is right.

Mr. Ryan: It is quite a small book, is it not?

Mr. Bogle: It is a little book, about that size (illustrating).

Mr. Ryan: If it is just a small book—— [777]

The Court: It is a question of a concern not now before this Court with any process being interfered with respecting records which are of no concern in this lawsuit.

Mr. Ryan: All we want, of course, is what relates to the matter in issue here. Not having seen the records I am at a little loss to state how it can be done. In view of the fact that it is contained in small books I would suggest that it is perfectly easy, in view of the fact that they relate to a long period, to produce them here and have Your Honor look at them.

The Court: Will you try to make your remarks responsive to the suggestion of counsel. Counsel made a definite suggestion, and I will ask the reporter to read it. (Record read.)

Mr. Ryan: I am perfectly willing to go down with someone to assist me, and Mr. Bogle, and look at the records they have, and do everything I can to



see to it that it is all produced here, all that is relative to the "Denali" during the time specified. I will do everything I can to expedite the matter, such as having photostatic copies made to substitute for the originals.

Mr. Bogle: I would suggest, Your Honor, that we leave that matter until this noon, and we will then call upon the compass adjuster and see if we can work that out.

Mr. Ryan: That will be done when?—Today?

Mr. Bogle: We will be very glad to.

Mr. Ryan: And before you take any testimony, of course, about the compasses?

Mr. Bogle: Well, I cannot promise that.

Mr. Ryan: Well, that is the point. We want those records [778] before we go into the question of compass adjustment.

The Court: Mr. Ryan, the Court cannot stop the proceedings. We will just have to do the best we can. I will bear with counsel for Claimants in respect to any matter involving the compasses that may turn around their opportunity of seeing those records. As I understand it, you gentlemen are going to see about that during the noon recess.

Mr. Ryan: Yes. Is that agreeable to you?

Mr. Bogle: Yes, that is right.

The Court: Then as I understand it the Petitioner is given until Tuesday at ten o'clock in the forenoon to comply with the order allowing the discovery as stated yesterday, upon the understanding that the Petitioner, as occasion permits the Petitioner to do



so, will supply so much of the information as may be available before that time, and the Petitioner will exercise diligence in trying to supply the information as fast as it can before that time.

Mr. Bogle: Yes, Your Honor. I would like to take up now and see if we can dispose of the specific demands which were enumerated last night. I will have to do that by putting Mr. McKinstry on the stand.

The Court: Mr. McKinstry will resume the stand, he having been previously sworn.

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M. McKINSTRY,

recalled as a witness on behalf of Petitioner, testified as follows:

Direct Examination [779]

By Mr. Bogle:

Q. Mr. McKinstry, demand was made for the advertisement of the sailing of the "Denali", the sailing date. Have you made an investigation and search of the records to see what you could find in that respect?

A. I have.

Q. What did you find?

A. I found that there was no particular advertisement or schedule mailed to shippers.

Mr. Ryan: If the Court please, may I suggest at this time that this is obviously hearsay testimony, information acquired by this man since yesterday afternoon from somebody else. He testified yester-

(Testimony of M. McKinstry.)

day that he knew nothing about these notices and had nothing at all to do with issuing them.

The Court: I understand that this witness has made a search in the records of the company to try to comply with the demand to produce, and that he is responding and advising the Court of his efforts to comply with that demand.

Mr. Ryan: Yes, Your Honor, but if he had nothing at all to do with sending them out, or that sort of thing—the man to call about it would be the man in charge of that.

The Court: The objection is overruled. The Court will hear what the witness has to say.

The Witness: No particular advertisements were sent out in the case of a freighter or irregular schedules, freighter schedules. It was the customary practice, and to the best of my knowledge, followed in this case, that [780] a notice was carried in the “Daily Index”.

The Court: Were you able to find the typewriting which initiated the giving of that notice?

Q. (By Mr. Bogle) Was there any such writing?

A. No. They would simply call up, the traffic department would simply call up the editor and give him the sailing date of any particular ship, for instance, the “Denali” in this case.

Q. The “Daily Index”, is that a daily shipping paper?

A. That is correct.

Q. Would that carry a certain day of sailing?

(Testimony of M. McKinstry.)

A. Yes.

Q. It merely shows a certain date with a certain number of steamers listed?

A. Yes.

Q. Did you make an effort to obtain copies of that paper during that period, copies of the "Index" during the period from May 1 to May 16, 1935?

A. Yes, sir.

Q. With what success?

A. Unsuccessfully. Our office copy of the "Index" has been destroyed, and we even contacted the publisher at that time, and his copies have been destroyed.

Q. Mr. McKinstry, would it be customary, from your experience, in breaking a freighter out to advertise that in the papers?

A. It would not be.

Q. Under what circumstances do you break a freighter out?

A. When there is sufficient cargo, or substantially a full load of cargo moving north. [781]

Q. Previously booked?

A. Previously booked.

Q. The second demand is as to any notices sent by the Petitioner to shippers advising them as to the sailing date. Did you make a search to see if there were any such records in the office files?

A. I did, and there were no such records.

Q. The next demand, as I have it, is for abstract of log books. Did you find any abstract of log books?

(Testimony of M. McKinstry.)

A. For the S.S. "Denali"?

Q. Yes.

A. I did not.

Q. What records are made, other than the report of the commander, which was produced yesterday?

A. There are no other records.

Q. Mr. McKinstry, at the present time what position do you hold with the company?

A. Superintendent of operations.

Q. The position previously held by Mr. Tracy?

A. Yes.

The Court: And you have access to all these files where you would expect to find these records?

The Witness: Yes, sir.

Q. Next was the azimuth and log books. Did you make a search in that respect?

A. I did.

Q. With what result?

A. No log books on file at the offices at Pier 2.

Q. Are there any compass or azimuth books?

A. No, sir. [782]

Q. Or deviation cards?

A. No, sir.

Q. Is it and was it the custom in May, 1935, to file compass books, azimuth books, log books or deviation cards at Pier 2?

A. It was not.

Mr. Ryan: That is objected to on the ground that the witness has no personal knowledge, and

(Testimony of M. McKinstry.)

that has been already testified to by Mr. Wilson, who was the actual head, as to what the custom was at that time, and what was done.

The Court: Objection overruled. You may go into that on cross-examination more fully.

Q. That would all come under your present department, would it?

A. Yes.

Q. Do you know of your own knowledge as to what the custom was in 1935, and had been for years previous thereto?

A. I know from the investigation that I made. I know what the practice is at the present time, but as of the time of this accident, I investigated that and was informed that there has been no change.

Mr. Ryan: I move to strike that.

The Court: That will have to be stricken.

Mr. Bogle: I might ask him what his investigation was, and we will see what it was.

The Court: Very well.

Q. What investigation did you make?

A. I inquired of persons that were in the employ of the company at that time. [783]

Q. Are they still in the employ of the company?

A. Yes.

Q. And they will be available?

A. Yes, sir.

Mr. Bogle: I think I will have to call them.

The Court: Yes; you should. That objection is sustained.

(Testimony of M. McKinstry.)

Q. Have you made a search in your department, and in other departments, to ascertain whether the log books of the "Denali", any log books or azimuth books, compass books or deviation cards of the "Denali", are now on file or in existence, or in the possession of the Alaska Steamship Company at Pier 2?

A. I have, and they are not in the possession of the company.

Q. Did you find the azimuth book, log book, deviation card or compass books of any other vessel of the Alaska Steamship Company for previous years?

A. No, sir.

Q. The next demand is for letters from the master to Mr. Wilson. Did you make a search of the files in the executive department to determine whether there were any such letters between July, 1933 and May 16, 1935?

A. I personally made a search, and I personally know that there were no such letters.

Mr. Ryan: I object to that and move to strike that last statement, that he knows that no letters were written by a third person to another man than this witness.

The Court: I do not know by what rule of evidence you can keep a witness from saying what he personally knows. [784]

Mr. Bogle: I might go a little further with that, Your Honor.



Testimony of M. McKinstry.)

Q. (By Mr. Bogle) In July, 1933, what position did you occupy with the company?

A. Assistant to the vice-president and general manager.

Q. Was there accessible to you the records, daily records of the vice-president and general manager's office?

A. Yes, sir.

Q. Did they all come under your personal supervision?

A. Yes, sir.

Q. Did you occupy that same position in May, up to May 16, 1935?

A. Yes, sir.

Q. As assistant to the vice-president did you personally peruse all the mail that came into that department?

A. Yes, sir.

Q. And since this trial started have you searched the records of that department?

A. Yes, sir.

Q. Did you find any letter from a master, any previous master of the "Denali", to Mr. Wilson during that period?

A. No, sir.

Q. Do you know of your own personal knowledge when the practice was first initiated of the masters personally addressing Mr. Wilson by letter?

A. It was about a year ago.

Q. The next demand was for the order putting the "Denali" in commission. I will hand you Peti-

(Testimony of M. McKinstry.)

tioner's Exhibits 10 and 11, and ask you whether there were any other orders putting the "Denali" in commission, any orders other [785] than those two exhibits?

A. No, sir.

The Court: Did you search for any such in the files of the company?

The Witness: Yes, I did; and I knew from personal knowledge that those were the only two.

Q. Did you search the files not only of your own department but the traffic department?

A. I searched the files of the traffic department and the executive department, and also the transportation department.

Q. Mr. McKinstry, after Mr. Wilson was appointed and elected vice-president and general manager of the company, on June 1st, do you know whether there was any reorganization of the company made at that time, as to departments, department heads, etc.?

A. There were no changes in any department heads.

Q. Was there any change in the organization of the company, into various departments?

A. No, sir; not right at that time.

Q. Were there any changes in the department organizations as to personnel subsequent to that time?

Mr. Ryan: I object to this line of examination on the ground that it is not proper redirect examination. The witness left the stand.

Testimony of M. McKinstry.)

Mr. Bogle: That is probably true, Your Honor, but Mr. Ryan made the positive statement yesterday when he was addressing Your Honor on the subject that Mr. Wilson had completely reorganized this company and had changed the entire line-up and personnel, segregating the duties [786] of the different departments. I merely want to bring out from this witness what the situation was.

The Court: Do you object to the witness being recalled for the purpose of inquiring into that?

Mr. Ryan: No; not if he is recalled.

The Court: Let the record show that the witness is recalled for the purpose of propounding questions on direct examination upon this subject.

A. Well, the only change—for instance, let me carry that out—Mr. Baker was head of the traffic department when Mr. Wilson took charge of the company, and he is still head of the traffic department. Mr. Ford was the head of the accounting department when Mr. Wilson took charge, and he is still at the head of the accounting department. Mr. E. M. Murphy was in charge of the maintenance department. He has subsequently resigned from the company.

Q. That is, subsequent to 1935?

A. Subsequent to 1935. Mr. Tracy was appointed general agent of the operating and transportation department during Mr. Wilson's regime.

Q. And he has since died?

A. He has since died.

(Testimony of M. McKinstry.)

Q. And you have been appointed to his position?

A. That is correct. Mr. W. B. Sprague was purchasing agent at the time Mr. Wilson took charge and he has since retired. Mr. C. O. Nelson was assistant purchasing agent and port steward at the time Mr. Wilson took charge and he is now purchasing agent. [787]

The Court: Mr. Bogle, there was one other classification of records or data called for which, I think, some attention was given yesterday afternoon. I marked it as item 4 in the order in which I have listed them, and it related to the charts on board May 16, 1935, and the company's records showing that those were the charts, showing their identity, and so forth.

Mr. Bogle: This witness would not know anything about that, Your Honor. I think there were two other requests—a request for the record of compass adjustments, also, that this witness would not know anything about.

The Court: I see.

Q. (By Mr. Bogle) Is that a fact, Mr. McKinstry?

A. That is correct.

The Court: You may cross examine, Mr. Ryan.

#### Cross Examination.

By Mr. Ryan:

Q. Now, Mr. McKinstry, who was your superior in May, 1935?

(Testimony of M. McKinstry.)

A. Mr. T. B. Wilson.

Q. Mr. Wilson has testified in this case as follows—

Mr. Long: (Interposing) The page and reference, please.

Mr. Ryan: Page 36 of the transcript.

Q. (By Mr. Ryan) It reads as follows: "Q.

How was the business of this company organized?

A. I organized it into what I would term natural departments. [788] The Court: Natural departments? The Witness: Yes, sir, as distinguished by the various activities in the company".

Do you mean to contradict that and say that he did not organize it; that he did not make the organization—

A. (Interposing) Well, the organization—

Q. (Continuing)—into natural departments as he describes it?

A. I am not contradicting anyone's statement. I mean I am simply reciting the facts that existed at the time that he arrived and what they have done subsequent to that time.

Q. Well, you didn't arrive there until after he had arrived, did you?

A. Nine days afterwards.

Q. That is right. You have no personal recollection of what the conditions were before you arrived there, have you?

A. No, sir.

(Testimony of M. McKinstry.)

Q. I notice that you just described Mr. Tracy as the general agent of the operating and transportation department. The word "general" was not in your title, was it?

A. No.

Q. It was not in the title of any other officer of the company excepting Mr. Wilson and Mr. Tracy, isn't that right?

A. The word "general"?

Q. Yes.

A. I think that that is correct.

Q. Mr. Tracy was only a purser, was he not? That was his [789] only experience, isn't that right?

A. I am not aware of Mr. Tracy's experience.

Q. You have no knowledge on the subject at all?

A. I know that he was a purser, but that was before my time with the company.

Q. You don't know whether he had any other experience than that on shipboard, do you?

A. No, I do not.

Q. Do you have any officer of your company with any experience on shipboard in the deck department or the navigating department, so far as you know of your own knowledge?

A. What was that question?

The Court: Read the question.

(Question read)

A. Well, there were a number of persons, for instance, in the accounting department that have been employed on shipboard, yes.

Q. In the accounting department?



(Testimony of M. McKinstry.)

A. Yes, sir?

Q. Those are the only ones that you know of?

A. That were employed in the accounting department that had been employed on shipboard.

Q. As what—sailors?

A. No, as pursers and freight clerks.

Q. Yes. Well, so far as you know there was no officer or employee of your company in its home office who had had any experience on shipboard in connection with the navigation of ships?

A. I cannot answer that. [790]

Q. Or the actual operation of the ship at sea other than in the engine departments, isn't that so?

A. Well, I never questioned everybody working for the company as to whether they had been to sea or not, and I am unable to answer that.

Q. Whose—

A. (Interposing) There may possibly be those on shore that have been to sea as a sailor or as a deck officer, but I am not aware of it.

Q. Who is the head of the office here—the home office of the company right now?

A. You mean who is the vice-president and general manager right now?

Q. Yes; who is that?

A. Mr. Charles Bocking.

Q. Is he your superior?

A. Yes, sir.

Q. Then you did not succeed him to Mr. Wilson's job, did you?

A. No.

(Testimony of M. McKinstry.)

Q. Mr. Bocking succeeded him?

A. Yes, sir.

Q. You made a search for log books, did you or just for abstract logs?

A. I made a search for log books.

Q. What are the log books on a ship, do you know?

A. It is the record of the voyage.

Q. All right. Just state what you know about log books on a ship so far as identifying them is concerned.

A. The log book contains information that happens on the [791] voyage; arrivals; departures speed.

Q. Well, is there one log book, are there a hundred log books, or what?

A. There is one log book to a voyage.

Q. There is one log book to a voyage?

A. Yes, sir.

Q. I see.

A. Which department are you talking about?

Q. Any and all departments.

A. There will be a log book in the engine department, and there will be a log book in the deck department.

Q. And those are all the log books there are?

A. Well, there probably is a log book in the radio department. They all keep log books.

Q. Those are all the log books there are, is that it?

(Testimony of M. McKinstry.)

A. That should be sufficient.

Q. You didn't look at the list that we made the demand for the production of before you began the search, or during the course of it, did you?

A. No, sir. I have not looked at your list at all yet.

Q. Have you ever seen an azimuth book?

Mr. Bogle: I object to that, if Your Honor please, as not proper cross examination.

The Court: Objection overruled. He may inquire touching the books that he made a search for.

The Witness: Yes, sir.

Mr. Long: Now, if Your Honor please——

Q. (By Mr. Ryan) What is an azimuth book?

Mr. Long: Counsel's question is not limited to the search that this witness made. I object to the question [792] unless it is confined to that.

The Court: The objection is overruled.

The Witness: What is the question?

(Question read)

A. Well, I am not a navigator and I am not in a position to explain technically what an azimuth book is, and I do not intend to be in that position.

Q. You would not know one if you saw one, would you?

A. Yes, I would.

Q. How would you know it?

A. Well, it would be pointed out to me.

Q. By somebody else?

A. Certainly.

(Testimony of M. McKinstry.)

Q. You could not find it yourself?

Mr. Long: I suggest, Your Honor, that course is arguing with the witness and I object to the form of interrogation.

The Court: That apparently closes the interrogation——

Mr. Ryan: (Interposing) All right.

The Court: (Continuing)—on that point. The objection is sustained.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Now, exactly what is an abstract log book, if you know?

A. It is the commander's report that was submitted here yesterday in evidence.

Q. Now, Mr. Wilson testified that there was not only that voyage report, but there was also an abstract log book. Do you contradict that? [793]

Mr. Long: I object to that.

Mr. Bogle: And, further, I do not think that Mr. Wilson testified to that.

Mr. Ryan: Yes, he did.

Mr. Bogle: I think that he used the words interchangeably.

Mr. Ryan: I don't know. I beg your pardon if he did.

The Court: You can put the question, if he did so testify, without saying positively——

Q. (By Mr. Ryan) Now, if Mr. Wilson did testify that in addition to the voyage reports there were abstract log books——

(Testimony of M. McKinstry.)

A. (Interposing) Well, the abstract log book—

Q. (Continuing)—that is outside of your knowledge, isn't it?

A. Yes, that is beyond my knowledge.

Q. You never saw an abstract log book in your life, did you?

Mr. Bogle: Let me ask you, do you mean to say that what Mr. Wilson said is beyond his knowledge?

Mr. Ryan: I would prefer that you would take whatever questions you desire up on redirect examination in regard to what you want.

The Court: Yes.

The Witness: It may be possible that Mr. Wilson was referring to the voyage report and the abstract log as being one and the same document.

Q. (By Mr. Ryan) I am not asking you to speculate.

Mr. Ryan: I move to strike that out.

The Court: The motion is denied. The witness [94] can explain his answer and his understanding of the question propounded.

Q. (By Mr. Ryan) Have you ever seen an abstract log book in your life?

A. I have seen an abstract of a log, yes, sir.

Q. All right. Now, what is in the log book of the ship?

A. I have endeavored to explain to you once. Have the court reporter read it back to you.

The Court: Unless the Court rules that you need not answer, you should answer the question if you can.

(Testimony of M. McKinstry.)

The Witness: The log book is a detailed summary of the voyage.

Q. (By Mr. Ryan) Does it show anything about the course that was steered?

A. Certainly it does.

Q. An abstract would show that, too, wouldn't it?

A. Not necessarily—not in the term of abstract. The commander's report that was submitted in evidence did not show the course that was steered.

Q. I see. At any rate you never have seen anything that was called an abstract log book or that anybody ever referred to as an abstract log book in your presence, isn't that so?

A. Except the commander's report which we refer to as an abstract of the log.

Q. But it is not so entitled, is it?

A. Not on the particular heading, no. It is entitled "Commander's Report".

Q. Certainly. Did you make any search to ascertain the navigational equipment that was supplied to the "Denali"? [795]

A. I did not.

Q. You did not?

A. No.

Q. Does your company have records of that?

A. That would come under Mr. E. M. Murphy, superintendent of maintenance at that time.

Q. But he is not with your company any longer, is he?

A. He was with us at that time.



(Testimony of M. McKinstry.)

Q. You don't know whether your company has records showing that point, do you?

A. I am not in a position to answer that.

Q. Who would have that?

A. Mr. Murphy, I suppose, would have it.

Q. You mean that he would take the company's records away with him after he left the company?

Mr. Bogle: I object to that as not proper cross examination of this witness.

The Witness: I misunderstood that question.

Mr. Ryan: All right. I demand the production of the records of this company showing exactly what navigational equipment was on board the "Denali", and all aids to navigation, and books and instruments, and so forth, that were on board her at the time that she sailed on May 16, 1935.

Mr. Bogle: Is that an enlargement of the previous demand, Mr. Ryan?

Mr. Ryan: Yes, it is, in view of the nature of his testimony this morning. That is an enlargement, and that is quite important, I think. It will have to come out. [796]

Mr. Bogle: If Your Honor please, I have no objection to these demands, but would it not be more logical and proper that the demands be made in connection with the witness' testimony who testifies with reference to the subject matter of the demand? This man says that he knows nothing about it, and that it does not come in his department. We will have Mr. Murphy on the stand.

(Testimony of M. McKinstry.)

Mr. Ryan: A demand can be made at any time for the production of documents irrespective of—

Mr. Bogle: (Interposing) I think it must be made with reference to the testimony given by the witness on the stand.

The Court: The demand is noted at this time, and the petitioner is called upon to produce what is called for by that demand, and if what has been said by counsel for petitioner is in the nature of an objection, the Court overrules that objection.

Mr. Bogle: Let me get it so that we won't have any misunderstanding. I would like to have the court reporter read that demand back to me.

The Court: Yes. And you might write it out, so the petitioner may be advised what it is you are demanding, Mr. Ryan.

Mr. Bogle: What was that demand, Mr. Reporter? (The demand of Mr. Ryan was read.)

Mr. Ryan: And the dates on which they were supplied to the vessel.

Mr. Bogle: Now, with reference to aids to navigation you refer to publications? [797]

Mr. Ryan: That is, aids to navigation—any navigator—that any navigator would say were just a certain set of things. I do not know what you supplied them. That is what I am trying to find out. I cannot specify any more distinctly than that. Certainly, this is not a very broad demand.

Q. (By Mr. Ryan) Do you mean to say there are no records of your company showing the date on

(Testimony of M. McKinstry.)

which the "Denali" was expected to sail in May, 1935?

A. She was expected to sail about the middle of May.

Q. Well, the document that was produced in connection with your testimony or with Mr. Wilson's testimony here gave the date specifically as May 15th, isn't that so?

A. According to the wording of that letter, yes, sir.

Q. Now, I would like to know how you draw the inference that it was about the middle of May that she was supposed to sail.

The Court: That has already sufficiently been gone into.

Mr. Ryan: Yes, Your Honor.

The Court: Proceed.

Q. (By Mr. Ryan) If I recollect correctly, you were testifying on direct examination this morning that you know that no notices were sent to shippers regarding the sailing date of the "Denali" in May, 1935. Do you wish to stand on that testimony?

A. I believe I said I made an investigation this morning and determined that no notices—no printed notices were sent to shippers.

Q. You don't know of your own knowledge anything on the [798] subject, do you?

A. I know from investigation that I made this morning.

(Testimony of M. McKinstry.)

Mr. Ryan: Yes. I move to strike out the witness' testimony in that respect, on the ground that it is not based on personal knowledge.

Q. (By Mr. Ryan) And you got your information from somebody else in the company, isn't that right?

A. I made an investigation in the traffic department where such notices come from.

Q. Who did you talk to?

A. I talked to the traffic manager.

Q. And your conclusion is based on what he told you?

A. My conclusion is based on what he told me.

Mr. Ryan: I move to strike out his testimony in that respect on the ground that it is hearsay.

The Court: If that is all the source of his information——

Mr. Ryan: (Interposing) Is that the——I beg your pardon.

The Court: If that is all the source of his information it will have to be stricken.

Q. (By Mr. Ryan) Is that all the source of your information?

A. From the traffic department—from the traffic manager.

The Court: The motion is granted.

Mr. Long: Exception, Your Honor.

The Court: Exception allowed.

Q. (By Mr. Ryan) Now, after the letter or order, rather, signed by you on behalf of Mr. Wil-

(Testimony of M. McKinstry.)

son, Petitioner's Exhibit 11, on May 3, 1935, fixing May 15, 1935, as the date the "Denali" was to sail what was done to advise [799] shippers or notify them that the "Denali" would sail on that date outside of the publication in The Daily Index, if you know?

A. To my knowledge nothing was done.

Q. You do not know one way or the other, do you?

A. You are asking me now of my own personal knowledge?

Q. Yes.

A. No.

Q. Who would know that?

A. The traffic manager would know that.

Q. Have you a list of those—the way you described it to the witness on your direct, Mr. Bogle if I can look at it—that you gave the witness a description, Mr. Bogle? I mean, I just don't recall certain descriptions that you gave of memoranda that you asked people to investigate.

Mr. Bogle: I just made a memorandum of that that you gave me yesterday.

Mr. Ryan: That is what I have in mind, yes.

Mr. Bogle: Well, this is it (handing document to Mr. Ryan).

Mr. Ryan: Thank you.

Q. (By Mr. Ryan) Did you make an investigation to ascertain what charts were supplied to the "Denali"?

(Testimony of M. McKinstry.)

A. I did not.

Mr. Ryan: That is all, Your Honor.

The Court: Any further redirect?

Mr. Bogle: That is all.

The Court: You may be excused, then, Mr. McKinstry.

(Witness excused) [800]

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The Court: Can you now proceed with the further cross examination of Mr. Wilson at this time, or is that not convenient?

Mr. Ryan: Well, if Your Honor please, as far as Mr. Wilson—

The Court: (Interposing) Very well, then. Call your next witness on behalf of the petitioner.

Mr. Ryan: As far as Mr. Wilson is concerned, Your Honor, he being the head of the office, and in view of the fact that Mr. Wilson wants to get away, I am willing that Mr. Wilson be excused.

The Court: Subject—

Mr. Ryan: (Interposing) Until after notice of production of documents has been complied with, but at that time there will probably be some questions that I would necessarily ask him on cross examination.

The Court: Is it agreeable to excuse him subject to call? I mean, excuse him from attendance in the court room?

Mr. Ryan: Yes, Your Honor.



The Court: Mr. Wilson, you are excused. You may go and come about the city as you please, but kindly leave word or accurate information as to where you can be reached on the telephone.

Mr. Wilson: Thank you, Your Honor.

The Court: At all times.

Mr. Wilson: Yes, sir. I will do that.

Mr. Bogle: Shall we proceed, Your Honor?

The Court: You may proceed. Call your next witness. [801]

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W. T. FORD,

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Bogle:

Q. Give your name, please.

A. W. T. Ford.

Q. Mr. Ford, are you associated with the Alaska Steamship Company?

A. I did not hear you.

Q. I say, are you connected with the Alaska Steamship Company?

A. Yes, sir.

Q. You will have to speak up louder, Mr. Ford.

A. Yes.

Q. The acoustics are bad.

The Court: Any time, if one does not understand the answer, if you will make that known the

(Testimony of W. T. Ford.)

Court will have the reporter repeat it, or request it. Proceed.

Q. (By Mr. Bogle) In what capacity are you employed by the Alaska Steamship Company?

A. Secretary and auditor.

Q. And how long have you held that position with the Alaska Steamship Company?

A. Since 1911.

Q. Continuously?

A. Yes.

Q. Are you the head of the accounting department?

A. I am.

Q. Are you familiar with the different departments into [802] which the Alaska Steamship Company was organized prior to 1933?

A. Yes, sir.

Q. What were those departments?

A. The four departments were the traffic department, purchasing department—

Q. (Interrupting) Wait a minute. The traffic department, who was the head of that department?

A. Mr. L. W. Baker.

Q. And his title?

A. Traffic manager.

Q. Yes. And what other departments?

A. The purchasing department in 1935 was headed by W. B. Sprague.

The Court: Prior to 1933, I think the question was.

(Testimony of W. T. Ford.)

The Witness: Yes.

Q. (By Mr. Bogle) Prior to 1933.

A. Mr. Sprague was head of the purchasing department. I was head of the accounting department. Mr. Tracy was head of the operating department, and Mr. Murphy was head of the maintenance department.

Q. That is prior to 1933?

A. Yes, sir.

Q. Now, do you know when Mr. Wilson was elected vice-president and general manager of the company?

A. I think on the date of June 1, 1933.

Q. And from that date until May 16, 1935, he remained in that capacity?

A. He did.

Q. Who was the highest ranking executive in the City of [803] Seattle?

A. At that time?

Q. Yes.

A. At that time Mr. Wilson was.

Q. Where is its principal place of business—where is the office and the principal place of business of the Alaska Steamship Company?

A. Pier 2.

Q. Have they—

The Court: (Interposing) You mean in Seattle?

The Witness: Yes, in Seattle, Washington.

Q. (By Mr. Bogle) Pier 2 in Seattle?

A. Yes, sir.

(Testimony of W. T. Ford.)

Q. Where are the accounting offices located with reference to the executive offices?

A. They are next door to them on the second floor.

Q. Where is the traffic department located with reference to the executive offices?

A. On the same floor of Pier 2.

Q. And the purchasing and steward's department?

A. On the same floor.

Q. Where is the maintenance repair department located? That is, where was it located in 1933, and if there has been any change, where is it located now?

A. In 1933 the superintendent of maintenance had an office on the ground floor of Pier 2, and he also had an office at the dock in West Seattle where the ships tied up.

Q. At the West Seattle yard?

A. Yes, sir.

Q. And what was the nature of the West Seattle yard? [804]

A. It is the dock formerly owned by Heffernan—J. T. Heffernan—where we do our repair work. It is a machine shop and a dock.

Q. Under what terms does the Alaska Steamship Company hold it?

A. It holds it under a lease.

Q. Was that in operation prior to 1933?

A. Yes, sir.

Q. Do you know of any particular changes that were made in the organization and the functions of

(Testimony of W. T. Ford.)

the different departments of the Alaska Steamship Company between July or June, 1933, and May 16, 1935?

A. No major changes were made that I know of.

Q. And were there any changes made in department heads during that time?

A. No, unless—I don't remember just when that time was that Mr. Sprague retired, Mr. Bogle, but I don't think that he did at that time.

Q. Well, he still holds his title, doesn't he, and he is semi-active?

A. Yes, he is semi-active.

Q. Mr. Ford, in your capacity as auditor of the company do you have possession of the harbor records and all accounting records of the company?

A. Yes, sir.

Mr. Bogle: I will have this marked for identification.

(Document marked for identification Petitioner's Exhibit No. 13.)

Q. (By Mr. Bogle) I hand you Petitioner's Exhibit 13, for [805] identification, and I will ask you what that is?

A. This is the freight manifest covering the cargo on board the "Denali", voyage No. 38.

Q. Is that the voyage upon which the "Denali" stranded and was lost?

A. Yes, sir.

Q. Can you tell from the manifest of freight on the "Denali" what freight was prepaid?

(Testimony of W. T. Ford.)

A. I can.

Q. What amount of prepaid freight was there on voyage 38 of the "Denali" leaving Seattle May 16, 1935?

A. \$1679.29.

Q. Was the freight with reference to the balance of the cargo collect?

A. It was.

Q. If the cargo was lost is any portion of that freight now collectible by you?

A. It is not.

Q. Or by the company?

A. It is not.

Q. What, Mr. Ford, were the passenger revenues on that voyage?

A. \$144.

Q. Have you heretofore issued a voucher to Charles E. Allen, as trustee in this proceeding, for the total amount of the prepaid freight and passenger money?

A. We have.

Mr. Bogle: I will have this marked for identification—mark them both the same, Mr. Clerk.

(Documents marked for identification [806]

Petitioner's Exhibit No. 14.)

Q. (By Mr. Bogle) Referring to Petitioner's Exhibit for identification 14 will you state what that is?



(Testimony of W. T. Ford.)

A. This is check numbered 4770, issued by the Alaska Steamship Company to Charles E. Allen, trustee, for \$1823.29, and certified to by the Pacific National Bank.

Q. Does that cover the prepaid freight and passenger money?

A. It does.

Q. I will ask you to look at exhibit for identification marked Petitioner's 14-1. What is that?

A. That is a photostatic copy of this check.

Q. In other words, Petitioner's 14-1 is a certified copy of Petitioner's 14?

A. Yes.

Mr. Bogle: I would like, if Your Honor please, to suggest to counsel that they compare the two, as the certified check must be returned to the bank as part of their permanent records, and we got it out for the purpose of having it photostated.

The Court: Are you at this time offering then Petitioner's 14-1?

Mr. Bogle: Yes.

Mr. Ryan: No objection, Your Honor, subject to comparison.

Mr. Bogle: I think that is quite immaterial because the trustee's receipt is on file.

The Court: The Court will reserve temporarily its ruling on the offer until that comparison is made, the reason being that I assume that counsel for the petitioner desire to withdraw Petitioner's 14 for [807] identification.

(Testimony of W. T. Ford.)

Mr. Bogle: I will also offer at this time Petitioner's for identification 13.

Mr. Jones: The copy is in all respects the same as the original check, Mr. Bogle. It is in all respects correct.

Mr. Ryan: Then we have no objection.

The Court: Do you offer Petitioner's 14-1 in evidence and request to withdraw Petitioner's 14 for identification?

Mr. Bogle: Yes, Your Honor.

The Court: That offer is allowed, and 14-1 is admitted, and Petitioner's 14 for identification is withdrawn. Hereafter the record will show for all purposes that 14-1 may be referred to and known as 14—Petitioner's Exhibit 14.

(Photostatic copy of check to Charles E. Allen, trustee, in the amount of \$1823.29 received in evidence as Petitioner's Exhibit No. 14.)

Mr. Bogle: I will offer Petitioner's Exhibit 13 or identification in evidence, being the cargo manifest.

The Court: Mr. Ryan, if you would like to have a moment to check that over with co-counsel, you may do so.

Mr. Ryan: I would like to have that opportunity. Is this the original manifest, may I ask the witness?

The Witness: Yes, this is the original manifest.

Mr. Ryan: It appears to be a carbon copy.

The Court: Is it your office original—

(Testimony of W. T. Ford.)

The Witness: (Interposing) That is the manifest that was turned over to the ship. It probably might [808] have been a carbon copy. We make a great number of them, for the Alaska Railroad for their purposes. That was in fact the one that was on the ship at the time of the accident. You can still see the oil stains on it.

Mr. Ryan: Yes.

The Court: And always treated by your company as the original manifest?

The Witness: Yes, sir. That is in my files.

Mr. Ryan: The original manifest, however, is actually filed in some office, isn't it?

The Witness: No. That is in effect and in fact the original there. We run a lot of carbon copies and turn them over to the railroad company in Alaska, and that is treated as the original.

Mr. Ryan: Is this the whole of it?

The Witness: That is the whole of it, yes, sir.

Mr. Ryan: I have no objection to that. What I had in mind, when the ship sails—could I just ask one more question?

The Court: Yes.

Mr. Ryan: When the ship sails what is done with the manifest, if you know, by the master?

The Witness: That tissue part there that is type-written is prepared by the dock and handed to the pursuer aboard the ship. After the vessel has left the dock that is written by the purser aboard the ship. We do not manifest all of our freight before we leave the dock.

(Testimony of W. T. Ford.)

Mr. Ryan: There is no manifest filed with the collector of the port by the master when the ship sails?

The Witness: Not that kind of a manifest. [809]

Mr. Ryan: I see.

The Court: Petitioner's 13 is admitted.

(Document, ship's cargo manifest covering the cargo on board the "Denali", Voyage No. 38, received in evidence as Petitioner's Exhibit No. 13.)

Mr. Bogle: Please mark this for identification, Mr. Clerk.

(Document marked for identification Petitioner's Exhibit No. 15.)

Q. (By Mr. Bogle) Referring to Petitioner's Exhibit 15 for identification, Mr. Ford, will you state just what that is?

A. These are copies of the bills of lading covering the cargo on the "Denali", Voyage 38.

Q. Your copies?

A. Yes.

Q. Those are your original records?

A. Those are original records.

Q. I may be in error, but is it from the original bills of lading as contained in Petitioner's Exhibit 15 for identification that the manifest of the ship is made up?

A. The manifest is prepared from the bills of lading.

(Testimony of W. T. Ford.)

Q. Now, on certain of the bills of lading, Mr. Ford, I notice a large sized rubber stamp "Pre-paid". What does that mean?

A. That means that that shipment was paid in advance.

Q. And those are the prepays that you have figured up as some sixteen hundred odd dollars?

[810]

The Court: Do you make the offer now?

Mr. Bogle: Yes; I will offer it.

The Court: With reasonable opportunity allowed opposing counsel to inspect the offered exhibit.

Mr. Ryan: May I ask a question?

The Court: Yes.

Mr. Ryan: These are not the original bills of lading, are they?

The Witness: The original bills of lading go to the shippers in the form of a receipt. This is what we work from.

Mr. Ryan: This is your home office copy of the bills of lading that were issued to the shippers?

The Witness: A bill of lading is a receipt to the shipper for his goods, and that is delivered to the shipper. This is the file copy which we use aboard ship, and comes to my office as a permanent record.

Mr. Ryan: As a file copy of these receipts?

The Witness: Yes.

The Court: Which is at all times treated as your company's original record?

(Testimony of W. T. Ford.)

The Witness: Yes, sir.

The Court: Of those bills of lading?

The Witness: Yes, sir.

Mr. Ryan: No objection, Your Honor.

The Court: Petitioner's Exhibit No. 15 is now admitted.

(Bills of lading received in evidence Petitioner's Exhibit No. 15.)

Mr. Ryan: Subject, of course, to later comparison [811] and check, if necessary. When this matter goes before the Commissioner we have stipulated that all matters——

The Court: I think, Mr. Ryan, it is proper to observe in that connection that the Court rules upon its admissibility on the proof offered in that connection, and the Court does rule the proof is sufficient, and the exhibit is admitted without limitation.

Mr. Bogle: I take it, Mr. Ryan, that you will produce the original as part of your case.

Mr. Ryan: That is not before us now. We have stipulated that those matters would be reserved.

Mr. Bogle: I make demand now, then, that the Claimants produce the original bills of lading, which are in their possession.

Mr. Ryan: If the Court please, the stipulation is that all matters with reference to damages and amounts, and all that sort of thing be reserved until the hearing before the Commissioner, and on that assumption we have let all that side of the case wait until after the decision of the Court here.



(Testimony of W. T. Ford.)

The Court: The record will show the statements of counsel. Proceed.

Q. (By Mr. Bogle) Mr. Ford, all moneys coming to this company are handled through your department?

A. They are.

Q. Did you ever receive any revenue of any kind on account of the "Denali"? In other words, did you ever receive any salvage or any moneys from the loss of the vessel, from the salvage company?

A. No, sir. [812]

Q. There is a certain demand here, I think, for the corporate by-laws. Are the corporate by-laws of the Alaska Steamship Company under your direct control?

A. Yes, sir.

Q. Can you tell us when this company was organized?

A. In 1908.

Q. And subsequent to that date was it reincorporated?

A. It was.

Q. Do you remember the date of that?

A. It is in the record there.

Mr. Bogle: I do not want to put this book in evidence, and I am trying to comply with the demand.

The Witness: The certificate of reincorporation is there.

(Testimony of W. T. Ford.)

Mr. Ryan: We would not, of course, require that it be put in evidence. I think if Mr. Bogle and I could get together sometime here we could select the parts that are relevant and have photo-static copies made.

Mr. Bogle: That is quite all right.

The Court: Under those circumstances, will you kindly in the oral testimony refer to it in such a manner as to specifically identify it? The Court will try to accommodate counsel without requiring it to be marked at this time by the clerk.

Q. (By Mr. Bogle) Will you give the date of its reincorporation?

A. The certificate issued by the State of Nevada was dated the 18th day of May, 1933.

Q. That shows it was reincorporated under a new corporate law of Nevada, doesn't it? [813]

A. It was reincorporated under Section 82 of the Act of 1925.

Q. Does your minute book show Mr. Wilson's election?

A. Yes, sir.

Q. As vice-president and general manager?

A. On June 1, 1933.

The Court: What page? Identify the record so that it may be referred to.

Q. Yes; do that, Mr. Ford.

A. Page 65 of the minutes of the company.

Q. That was at a meeting of the directors, of the company?

(Testimony of W. T. Ford.)

A. A meeting of the directors.

Q. Do your corporate by-laws specifically define the duties of the various officers?

A. Yes; they do.

Q. Will you refer now to the by-law defining the duties of the president. What page is that on?

A. Page 15.

The Court: Of the by-laws?

The Witness: Yes. Shall I read that?

Mr. Ryan: I do not know what is in it. May we just glance at it?

Mr. Bogle: We are either going to get together on it or read it in the record, one way or the other.

Mr. Ryan: I haven't the faintest idea what it is.

Mr. Bogle: Possibly we can let this go and see if we can get together. That will save time.

The Court: Very well.

Mr. Ryan: I am sure we can simplify that down to just a few minutes if we can examine it together.

[814]

The Court: I will say this, Mr. Bogle, that it might be desirable to have him refer to it, so that the record will show where the subject matter is dealt with in the by-laws.

Mr. Bogle: I have that marked, if Your Honor please, and we can get it in the record.

The Court: Very well.

Mr. Bogle: If Your Honor please, I am not quite sure of the form, but there is a deed of trans-

(Testimony of W. T. Ford.)

fer that was filed in the proceedings, transferring the interest of the Petitioner in this ship, conveying all of its interest in the steamer "Denali", to Charles E. Allen as Trustee in this proceeding. I would now ask that that be incorporated as an exhibit. It is in the record, but I think it would be probably a little better to offer it as an exhibit in the case at this time. It shows our complete transfer of interest.

The Court: It being capable of physical possession and manual delivery, you ought to make some proffer of it, should you not? To say it is somewhere in the records is rather vague.

Mr. Bogle: I will get it out of the records. It is in the records of this case in this court, in the Clerk's office, in the limitation proceeding. I haven't those files.

The Court: If you will assist the Clerk in locating it you may now get such record. At this point we will take a five-minute recess.

(Recess)

Mr. Bogle: We have found the document, Your Honor. [815]

The Court: Very well. You may proceed.

Q. (By Mr. Bogle) Mr. Ford, I hand you a document marked Petitioner's Exhibit No. 16 for Identification, and ask you if that is your signature on the third page, as secretary?

A. It is.

Q. Is that Mr. Wilson's signature, as president?

(Testimony of W. T. Ford.)

A. It is.

Mr. Bogle: If Your Honor please, I offer this deed of transfer in evidence.

The Court: Are you prepared to proceed in the absence of Mr. Ryan?

Mr. Summers: He will be here in just a moment, Your Honor.

The Court: I wish you would be looking at that in order to see if there is any objection to it.

Mr. Summers: I know of no objection to that.

Mr. Jones: There will be no objection.

The Court: Very well. Petitioner's Exhibit No. 16 is admitted.

(Deed of transfer received in evidence Petitioner's Exhibit No. 16.)

Q. (By Mr. Bogle) Mr. Ford, what do you know as to the experience and qualifications of Mr. F. B. Tracy?

A. Mr. Tracy spent practically all his life aboard ships at sea, or in connection with the operation of steamship lines. He came into this organization at the time it was formed, in 1908, and spent the rest of his life with the company. He was purser on a great many ships on different runs, and was also agent at Anchorage and [816] Cordova, Alaska, and afterwards general agent at Seattle.

Q. How long had you personally known him?

A. Since 1909, up to the time of his death.

Q. To your knowledge was he well acquainted with the personnel of the Alaska Steamship Company offshore fleet, offshore crews?

(Testimony of W. T. Ford.)

A. Yes. I think he knew more members of the crews than any other person in the company.

Q. To what extent has been your acquaintance with Mr. Murphy?

The Court: When did the gentleman die to whom you were just referring?

The Witness: In December, 1936.

The Court: That was Mr. Tracy?

The Witness: Yes, sir.

The Court: Proceed.

Q. (By Mr. Bogle) What was the extent of your acquaintance with Mr. Murphy?

A. Very close. I knew him before he came with the Alaska Steamship Company, and was closely identified with him all the time he was employed by the company.

Q. Do you know approximately the date that he joined the Alaska Steamship Company?

A. My recollection is that it was sometime in 1921.

Q. And he was with the company continuously until after May, 1935?

A. Yes.

Q. Was he continuously in charge of the same character of work, or doing approximately the same duties during that period?

A. He was. [817]

Q. From the time the West Seattle yard was acquired by this company—do you know the date of that?

A. I don't know the exact date, but about ten years ago, Mr. Bogle.



(Testimony of W. T. Ford.)

Q. Was Mr. Murphy in charge of that yard from that date up until after 1935?

A. He was.

Q. What was the nature of the work performed at that yard, if you know?

A. Repairing of all the vessels, and reconstruction work on some old ships that we bought and rebuilt.

Q. What would you say as to Mr. Murphy's qualifications for the position which he held?

A. He ranks as one of the best in his line.

Mr. Bogle: I think that is all.

#### Cross Examination

By Mr. Ryan:

Q. One of the exhibits that Mr. Wilson produced here referred to certain invoices and requisitions, and matters of that sort. Are they in your department?

A. No.

Q. For instance, take the navigational equipment of a ship, the records showing the moneys paid for that, with reference to the proper invoice and requisition—

A. (Interposing) I haven't a requisition for it, but I have the bill if it was paid.

Q. You would have the bill?

A. Yes. The requisitions are made on the purchasing department for the supplies, and after they approve the [818] receipt they are paid by my office.

(Testimony of W. T. Ford.)

Q. And the receipted bill of the company who supplied the equipment would describe it?

A. We have no receipted bill, but the evidence is there that we paid them. We do not take receipts.

Q. I see. You have the voucher system.

A. Yes.

Q. But your vouchers would show it?

A. Yes.

Q. Those vouchers are in your department?

A. Yes.

The Court: By that you mean the voucher made by the issuance of a check and its return to you through the bank, the return of the check after it is paid.

The Witness: The check is evidence of payment.

The Court: Is that what you mean by the voucher system?

The Witness: Yes.

Q. Suppose a bill comes to your company for navigational equipment supplied, say, to the steamer "Denali", does that bill ever come to your department?

A. It has to, in order to be paid.

Q. Then what do you do with it when it comes to you?

A. When it comes properly approved a check is issued, a voucher check is issued in payment, and the invoice is attached to the carbon copy retained in my files.

Q. And the bill—is that what you mean by the invoice?

(Testimony of W. T. Ford.)

A. An invoice or bill is the same thing.

Q. That is retained in your files?

A. Yes. [819]

Q. And you send out a voucher check?

A. Yes, sir.

Mr. Ryan: I think I have already asked for the production, and I was just trying to identify it.

Q. Do your checks that you issue identify the item for which the payment is being made?

A. Yes.

Q. And those cancelled checks are in your possession?

A. They are.

Mr. Ryan: I think they are included in the demand already made.

Mr. Bogle: I will have to check that, Mr. Ryan. I do not think that we understood that you wanted them.

Mr. Ryan: No further cross-examination, but subject, perhaps, to calling this witness back when the documents are produced. There may be something we would want to ask him.

The Court: Mr. Ford, you are employed all the time at the office of the company in the course of your duties?

The Witness: Yes, sir.

The Court: And during business hours you are available by telephone?

The Witness: Yes, sir.

The Court: Very well.

(Testimony of W. T. Ford.)

Mr. Bogle: I did not understand that they wanted the cancelled checks. We can get those. How long would it take you to assemble all the cancelled checks for equipment purchased for the "Denali"—during what period?

Mr. Ryan: Well, the checks are really sort of an [820] incident, but he has testified that the invoices are in his files now, and a copy of the voucher part is in his files. Is that right, Mr. Ford?

The Witness: The cancelled check is also——

Mr. Ryan: And the cancelled check?

The Witness: Yes.

Mr. Ryan: I mean that is just for the steamship "Denali" during the period that the Court has ruled as to the various items that should be produced. I do not think I am adding anything to what has already been demanded and what the Court has already ruled upon. I am just identifying it more particularly.

The Court: Any further examination of this witness?

Mr. Ryan: No; except perhaps calling him back for further cross-examination if anything turns up in connection with that. If there is anything, of course, in this minute book, or in the by-laws, that we might want to ask him about, we might want to recall him for certain questions. I can agree now with Mr. Bogle on a time to examine the minute book.

(Testimony of W. T. Ford.)

Mr. Bogle: It is a little difficult for me to comply with demands and sit in court and examine documents also.

Mr. Ryan: There is no hurry about it.

The Court: I think you will have to call on some assistance with respect to being present at the examination of documents of things like that, or records

Mr. Bogle: This noon we were going down to the compass adjuster.

Mr. Ryan: Yes.

Mr. Bogle: If Your Honor please, I would like to [821] get this straight. The order for discovery that Your Honor granted yesterday was all records, orders and bills connected with the repairs and now in addition to that they want the receipted voucher showing the bills on all those items.

The Court: The records and bills—if the records comprise a returned cancelled check, after the check has been paid, wouldn't that properly be included in the records and bills relating to the transaction?

Mr. Bogle: Well, we can get it, but ordinarily a bill does not necessarily mean a receipt. I will take that up with Mr. Ford. That is all.

The Court: You may be excused from the stand, then, and you may retire from the courtroom at your convenience, subject to call.

(Witness excused.)

Mr. Bogle: If Your Honor please, at 2:00 o'clock I have the United States Steamboat Inspectors subpoenaed to appear here with their records. I can either start in with a witness now and not be able to finish with him——

The Court: I prefer to have you proceed.

Mr. Bogle: I was going to suggest that we might get the compass matter adjusted and the by-laws between now and noon.

The Court: I prefer to go ahead with the taking of testimony at this time.

Mr. Bogle: Very well. We will call Captain McDonald. [822]

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WILLIAM McDONALD,

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

Mr. Long: We are calling this witness somewhat out of order, Your Honor, due to the fact that he is sailing for an extended period.

The Court: Very well.

Direct Examinttion

By Mr. Long:

Q. Your name, please, Captain?

A. William McDonald.

The Court: Capt. McDonald, I suspect you have already observed how difficult it is to hear in this room, so you will keep your voice raised and clear and distinct at all times, so that all present can hear you.



(Testimony of William McDonald.)

Q. Where do you live, Captain?

A. I live at 528 16th Avenue North.

Q. Are you married?

A. Yes, sir.

Q. What is your business or profession?

A. I am a mariner by profession.

Q. Do you hold any licenses issued by the United States Department of Steamboat Inspection?

A. Yes, sir.

Q. What license do you hold?

A. Master, any ocean, and pilot for Southeastern and Southwestern Alaska.

Q. Master, any ocean?

A. Yes. [823]

Q. Referred to as a master's license, unlimited?

A. Unlimited, for any ship.

Q. That is endorsed with what pilot's license?

A. Southeastern and Southwestern Alaska.

Q. How long have you held that license, Captain?

A. Since 1921.

Q. How many years have you been going to sea, approximately?

A. Over 30 years.

Q. 30 years?

A. About that.

Q. Where were you born, Captain?

A. I was born in Scotland.

Q. Are you a citizen of the United States?

A. Yes, sir.

(Testimony of William McDonald.)

Q. How long have you held a pilot's license for Southeastern and Southwestern Alaska?

A. Ten years.

Q. Is that license issued by the United States Steamboat Inspection Service, Department of Navigation?

A. Yes, sir.

Q. Is it the result of examination?

A. Yes, sir.

Q. Is your master's license the result of examination by that department?

A. Yes, sir.

Q. Do you have the master's license with you at the present time?

A. No; I have not.

Q. Where is it?

A. It is hanging up on board the ship, hanging up in a [824] frame on board the ship.

Q. On what ship?

A. On the "Depere".

Q. Is that a sister ship of the steamer "Denali"?

A. Yes, sir.

Q. Are you presently about to leave the city on a voyage, Captain?

A. I expect to leave Monday, next Monday.

Q. On what voyage?

A. To South America.

Q. On that steamer?

A. On the S.S. "Depere".

(Testimony of William McDonald.)

Q. How many years, approximately, have you been sailing to Alaska, both Southeastern and Southwestern Alaska?

A. Steady since 1921.

Q. Steady where?

A. Running up to Alaska, since 1921.

Q. Has that service been on your license?

A. Yes, sir.

Q. And you have sailed since 1921 for what company?

A. For the Alaska Steamship Company.

Q. In what various capacities?

A. Second mate, mate, pilot and master.

Q. Prior to 1921, Captain, did you have any experience or service in the Alaska service?

A. Yes, sir.

Q. In what capacity?

A. As sailor, boatswain and quartermaster.

Q. Altogether, then, you have been sailing in the Alaska service as unlicensed and licensed officer for approxi- [825] mately how many years?

A. Since 1911.

Q. For the Alaska Steamship Company?

A. Not all the time.

Q. What other companies have you been employed by, Captain?

A. The Pacific Steamship Company. [826]

Q. Captain McDonald, have you ever been Master of the Steamer "Denali" before her loss?

A. Yes, sir.

(Testimony of William McDonald.)

Q. And when was that?

A. In October, 1934. I think it was in October.

Q. In October of 1934?

A. Yes, sir.

Q. Was that the last voyage, Captain, that she made in the 1934 season, if you know?

A. Yes. I think that that was the last voyage she made that season.

Q. And where did you leave the ship?

A. I left her in Seattle.

Q. Where in Seattle?

A. In the West Seattle yard.

Q. I see. Was she laid up at that time?

A. She was laid up.

Q. Could you give us the approximate date of that lay-up,—the approximate date, if you can?

A. About the first part of November.

Q. And at the conclusion of that voyage, Captain, did you make out a commander's report?

A. I didn't make it up, but I inspected it before it was turned in to the officer. The second officer makes them up, and I checked them up to see if they were correct just before they were turned in the office.

The Court: Which officer made them up?

The Witness: The second officer.

The Court: The second officer made them up and you checked them just before they were turned into the [827] office?

(Testimony of William McDonald.)

The Witness: Yes, sir, Your Honor.

Q. (By Mr. Long) Referring to what has been marked as Claimants' Exhibit A-1 for identification, Captain, I will ask you if that is your signature which appears here on the last page of this exhibit (handing document to witness)?

A. That is my signature there, yes, sir.

Q. And that is entitled what—that document?

A. That is for the Steamship "Denali", voyage 37, September 27th to October 24, 1934.

Q. And what is the document?

A. It is the commander's report.

Q. Did you make up this report?

A. I didn't make it up. The second officer made it up, and I checked it up to see that it was correct, and I signed my name to it.

Q. I see. Is that one of the duties of the second officer?

A. That is part of the duties of the second officer, to do that.

Q. Is this your signature on this report, Captain?

A. That is my handwriting, yes.

Q. That is your handwriting?

A. Yes.

Q. And, generally, Captain, what does the commander report cover—what subjects?

A. It covers the time between ports; kind of weather; and any unusual occurrences that happen on the voyage; any accidents or whatever may happen during the trip since the time you leave Seattle until the time that you return. [828]

(Testimony of William McDonald.)

Q. Does it cover the courses which were steered by the ship during the voyage?

A. The courses do not go in the master's report. They go in another log book.

Q. What other log book is that?

A. They go in the pilot house log book, and then they are copied off from there—some of the courses, and put down in the mate's log book.

The Court: Have in mind to speak distinctly every word that you use, Captain. It is difficult in this room to hear.

The Witness: Yes, sir.

The Court: What was the witness' answer?

(Answer read)

Q. (By Mr. Long) Were there, Captain, any unusual incidents or occurrences on that voyage?

A. No, sir.

Q. While you were master of the ship on her last voyage in 1934, state, Captain, what the condition of the vessel's standard and steering compasses were?

A. They were good.

Q. Did you during that voyage take any observations by azimuth to check their accuracy or deviations?

A. Yes.

Q. And what did you find—how did you find them?

A. I found them on some heading magnetic. On other headings two degrees, up to three.



(Testimony of William McDonald.)

Mr. Ryan: What was that answer?

(Answer read)

Q. (By Mr. Long) Were those deviations taken, Captain, [829] while the vessel was loaded with cargo?

A. Yes, sir.

Q. And what headings, do you recall, Captain, did you get the largest deviations?

A. On the west.

Q. Did the vessel have a deviation card in the pilot house?

A. Yes, sir.

Q. Posted?

A. Posted, yes, sir.

Q. For both the standard and steering compasses?

A. Yes, sir.

The Court: What do you mean by "headings"?

The Witness: That is the way the ship is heading at the time you put her on the course—we call it heading. Suppose the ship would be heading west, why we call that a heading. When she is steering west that is what we call a heading, the ship's head facing the west or facing the east, as the case might be.

Q. (By Mr. Long) That is the course that the ship's bow points to, is that it?

A. Yes, sir.

Q. Captain, were the deviations taken on that voyage entered in any book?

(Testimony of William McDonald.)

A. Yes, sir.

Q. In what book?

A. In the azimuth book—we have got a book for that purpose.

Q. What is it called?

A. It is called the deviation book.

Q. Other times referred to as the observation or azimuth book? [830]

A. Yes, sir.

Q. And what was the practice on board the vessel when you were her commander in 1934 with reference to taking deviations and observations?

A. The practice is to take deviations at all times, whenever we can get a deviation with the sun or stars.

The Court: Read the answer as much as he has given it, Mr. Reporter.

(Answer read)

The Court: Now, finish your answer.

The Witness: Yes, sir, that is right.

Q. (By Mr. Long) Had you finished your answer?

A. That is our practice; and I marked it down in this deviation book.

Q. I see.

A. For further information.

Q. And for what are the deviations used, Captain, that you obtain in that manner?

A. The deviations are used to be applied to the course that you are steering.

(Testimony of William McDonald.)

Q. Did those deviations cover various headings?

A. I beg your pardon?

Q. Did those deviations cover various headings that you took, Captain?

A. Yes, sir. We try to get them on all headings.

Q. And what was the maximum deviation that you observed, Captain, with cargo aboard during that trip?

A. To the best of my knowledge the way I recollect it was from magnetic to three degrees.

The Court: When you say "from magnetic", do you [831] mean magnetic north?

The Witness: That is no deviation at all. When I refer to magnetic—when I refer to that it means that there is no deviation at all.

Q. (By Mr. Long) That means, Captain, that if on the west heading there is no deviation, you call that magnetic?

A. We call that magnetic then.

Q. And the same with south, or southeast, or whatever—

A. (Interposing) Whatever my course may be. If there is no deviation I call it magnetic.

Q. That is correct?

A. Yes, sir.

Q. How did the deviation that you obtained, Captain, compare generally with the deviation card posted in the pilot house?

A. Well, there was—

(Testimony of William McDonald.)

Mr. Ryan: (Interposing) That is objected to unless it is shown that a comparison was made.

Mr. Long: Well, I will show that.

Q. (By Mr. Long) Captain, when you took your deviations did you compare those with the card in the pilot house—the deviation card?

A. No.

Q. Well, why not? Why didn't you do that?

A. Why not?

Q. Yes.

A. Because after the ship is on the way out, or wherever she may be, the deviation that is taken on that card is taken when the ship is light.

Q. What do you mean when you say that the deviation that is [832] taken on that card is taken when the ship is light?

A. Without any cargo.

Q. Now continue.

A. And then after we get her loaded then we take the deviation, and they do not compare, and the deviation in the pilot house that that is compared with, it is of very little use to us.

Q. Why?

A. Because the cargo or whatever may be on board the ship changes the deviation.

Q. And by which data did you steer your vessel, by the deviations as shown by the deviation card made when the vessel was light, and with no cargo, or the deviations as shown by your personal observation with cargo aboard?

(Testimony of William McDonald.)

A. By my own personal observations.

Q. What do your personal observations show, Captain, taken after you have your cargo on board?

A. Well, that is according to the nature of the cargo.

Q. That is correct. What do they show?

A. Sometimes——

Q. (Interposing) Now, just a minute. I do not mean the amount. I mean what do they indicate with reference to the compass itself—the effect on the compass itself? Maybe I do not make myself clear. Strike the question. After you have taken deviations, Captain, with the cargo aboard, do you steer by the deviations thus obtained, or by the deviations shown on the deviation card in the pilot house when the ship was light?

A. By the deviations that we take ourselves after the cargo [833] is on board. We go by that. We do not go by the deviation card.

Q. Why not?

A. Because the deviation changes when the cargo comes on board. It affects the compass to a certain extent, and it might be one degree or two degrees, and when the ship is swung in the Sound here an adjuster makes the compasses magnetic. He makes the compasses as close as he can to magnetic. And then after the cargo is taken on board we get that deviation ourselves and apply it to the course that we steer.

Q. Now, how do you obtain that actual deviation?

(Testimony of William McDonald.)

A. By the sun.

Q. By what instrument?

A. By taking an observation of the sun.

Q. Yes, but what instrument or instruments do you use to obtain that?

A. We use what we call a circle, or a polaris, but mostly an azimuth mirror. Mostly I use the azimuth mirror—most of the time.

The Court: What was that term, an azimuth what?

The Witness: Azimuth mirror.

Q. (By Mr. Long) An azimuth mirror?

A. Yes, sir.

Q. On approximately how many vessels of the Alaska Steamship Company, Captain, have you been employed as a licensed officer? Could you give us any idea?

A. I have been on pretty near all of them.

Q. And from that experience, Captain, can you tell us what the practice is, and was in May, 1935, and prior thereto, [834] with reference to taking observations and azimuths in connection with navigation?

A. I never seen any change since the time I went there until the present in that line.

Q. What is the practice?

A. The practice is to take the deviation at all times when you can get it.

Q. Now, are those standing orders in the pilot house of the ships, Captain?



(Testimony of William McDonald.)

A. That is the standing order from all captains, and it is posted up in the pilot house and it makes all officers take the deviations and mark them in the deviation book for future references.

Q. Was there such a notice posted——

Mr. Ryan: May I have that last answer read?

The Court: Read the answer.

(Answer read)

Mr. Ryan: Are those in writing or oral?

The Witness: Yes, sir, in writing.

Mr. Ryan: Well, I move to strike it out unless the writing is produced.

The Court: The motion is denied. Proceed.

Mr. Ryan: The writing is the best evidence.

The Court: He is not giving the contents of the order. He is just stating the fact and practice of handling them.

Q. (By Mr. Long) And, Captain, while you were master of the vessel in 1934 was that practice followed on your vessel?

A. Yes, sir. [835]

Q. On the "Denali" which you have referred to here?

A. Yes, sir.

Q. On that voyage, Captain—your last voyage in 1934 with the "Denali", do you recall what kind of weather you encountered, generally?

A. Well, it was in the fall of the year.

Q. Yes.

A. And we had a little fog, and a little rain, and changeable weather.

(Testimony of William McDonald.)

Q. Did you have any navigation on that trip through fog—any fog?

A. Yes, sir.

Q. Did your compasses work at all times in a satisfactory manner?

A. Yes, sir.

Q. Now, Captain, have you ever had occasion in connection with your service with the Alaska Steamship Company to bring a vessel out of the West Seattle yards?

A. Yes, sir.

Q. On the first trip in the spring?

A. Yes, sir.

Q. On several occasions, sir?

A. Yes, sir.

Q. Captain, can the deviations of the compass be obtained while the vessel is in the yard out of commission?

A. You only can obtain them on the one heading.

Q. That is right.

A. It can only be obtained the way that the ship is heading while she is laying in the yard.

Q. And what is the practice, Captain, with reference to the [836] compasses when the vessel is taken out of the yard? How are they checked, and by whom?

A. By the captain.

Q. Is that the practice in the Alaska Steamship Company, sir?

(Testimony of William McDonald.)

A. Yes, sir.

Q. Was it in 1935?

A. Yes, sir.

Q. And how does he check his compasses? Just tell us how in your own words, and slowly.

A. While he is moving around in the Sound naturally he is interested in his compasses and he is anxious to find if there is any deviation on the compasses or not, and he checks them up, if he can, going from dock to dock, and by land marks and things like that, to take care of the deviation.

Q. He checks them, you say, from point to point and dock to dock?

A. Yes, sir.

Q. Just explain that a little more fully if you will, please, Captain.

A. Well, in going over from West Seattle to the Colman Dock he can lay his course on the chart and he can see if the ship does not head the way it should, and then if it does not, you know that you have got some deviation, and that puts you wise to it and to be careful, and you find the deviation on it when the first opportunity presents itself.

Q. Very well. Do the docks in the port or harbor in Seattle head in any definite magnetic positions? [837]

A. Not that I know of.

Q. Do you understand what I mean?

A. No.

(Testimony of William McDonald.)

Q. Well, Captain, do you know what the heading of Pier 40 is?

A. Yes.

Q. Do you know what the heading of Pier 2 is?

A. Yes.

Q. Do you know what the heading of the majority of the docks in the City of Seattle is?

A. Yes, sir I do, if I lay the course on the chart.

Q. That is correct, and that can be obtained from the harbor chart, can't it?

A. Yes, sir.

Q. And can your compasses—the accuracy of your compasses be checked in that manner?

A. Well, no. I never check them by that.

Q. How do you check them?

A. I check them by the sun.

Q. What, if you have no sun?

A. Well, if I have no sun then I will do the best I can checking them by land, but I depend more on the sun than I do on land observations.

Q. Why?

A. Because I am not so used to land observations. The adjusters that adjust the compasses, they adjust them by land observations in the Sound.

Q. Do you know, Captain, whether or not independent compass adjusters in Seattle use the land observations here for adjusting compasses?

A. I think that they have got their marks. [838]

Q. You have been on board ships when compasses have been adjusted, have you?

(Testimony of William McDonald.)

A. Yes, sir.

Q. From dock to dock?

(The witness does not answer)

Q. You have been on board ships when compasses have been adjusted?

A. Yes, sir.

Q. And in weather when the sun cannot be observed, what method is used, to your knowledge?

A. Well, as a rule we never try to adjust them without having sun. But when there is no sun and we try to adjust compasses we do that with the adjuster's marks, because if you have to the adjuster has got marks of his own.

Q. In the Port of Seattle?

A. In the Port of Seattle.

Q. They do adjust compasses when there is no sun?

A. Yes, sir.

Q. By their own marks?

A. By their own marks, but I don't know their marks.

Q. Now, during the 1934 season, Captain, during which you had this ship, what was the condition of her steering gear?

A. Her steering gear was all right—good.

Q. Did it operate satisfactorily?

A. It operated satisfactorily, yes.

Q. Any difficulties?

A. No, sir.

Q. Was she in good operating condition when you laid the [839] vessel up in 1934?

(Testimony of William McDonald.)

A. Yes, sir.

Q. Captain, what is the practice in the Alaska Steamship Company insofar as the selection of routes in sailing to Alaska is concerned, and was in 1935—on freight vessels?

A. Well, there is no selection of routes that I know of, except that we get our sailing orders from the company.

Q. Yes.

A. The ports of call.

Q. The ports of call?

A. Yes, but—

Q. (Interposing) Do the sailing orders contain any particular route that you should take?

A. No, sir. That is left up to the master, to use his own judgment to the best of all concerned.

Q. Taking into consideration what factors?

A. Taking into consideration the weather, weather conditions and tides.

Q. Captain, in bringing a ship out of the yards and making a check of your compasses, in the event that you found any unusual deviations what was the practice, and what was the practice of the Alaska Steamship Company to your knowledge in connection with the adjustment of any compasses?

A. If I would take the ship out of the yard and I found out that the compasses were out a lot I would send in a requisition to get them adjusted.

Q. To whom?

A. To Mr. Murphy. [840]

Q. Did you ever send in any such a requisition?



(Testimony of William McDonald.)

A. Yes, sir.

Q. And were the compasses adjusted?

A. Yes, sir.

Q. Did you ever request an adjustment, Captain, in all of your experience, of Mr. Murphy and have it refused?

A. No, sir, he never refused me a thing.

Q. Well, Captain, have you worked for other companies than the Alaska Steamship Company?

A. I have worked for the Pacific Steamship Company.

Q. The Pacific Steamship Company?

A. Yes, sir.

Q. What is the practice of that company? Does that operate to Alaska?

A. Yes, sir.

Q. Or it did, did it, at that time?

A. Yes, sir.

Q. What is the practice of that company in connection with the matter of compass adjustments?

A. Well, I was not so familiar at that time as I have been with the Admiral Line in that line of work.

Q. Do you know—have you any knowledge of it?

A. No.

Q. What is the general practice among companies, generally, and navigators, generally?

The Court: In the Alaska trade?

Q. (By Mr. Long) In the Alaska trade?

(Testimony of William McDonald.)

A. The practice is that when a man—when the captain wants a compass adjusted he calls for it and gets it.

Q. Who decides whether it should be adjusted?

[841]

A. The captain.

Q. In connection with your examination for your license, Captain, are you required to have and demonstrate knowledge with reference to compass operation and compass deviations?

Mr. Ryan: I object to that——

A. (Interposing) Yes, sir.

Mr. Ryan: (Continuing) ——on the ground that it is leading.

Mr. Long: I know it is leading, but I wanted to direct his attention to that particular phase of it. Does the Court allow the answer to stand?

The Court: Yes, it may stand.

Mr. Ryan: May I have the last question and answer read, if the Court please?

(Question and answer read.)

Mr. Long: Is that satisfactory to you, Mr. Ryan?

The Court: You may proceed.

Q. (By Mr. Long) Captain, what is the practice of the Alaska Steamship Company, to your knowledge, with reference to azimuth books and log books. Are they filed ashore or are they filed on board the vessel?

A. They are kept on board the vessel.

(Testimony of William McDonald.)

Q. Why?

A. Because they are the ship's property.

Q. Are they used from time to time by the ship's officers?

A. They are used for references. In certain ports that we go—probably we go in one place once a year, and we might not use the same log book twice for two years in succession—for two years' difference. [842]

Q. I see.

A. And we keep them for that reason aboard the ship.

Q. And are the azimuth books kept aboard the ship?

A. Yes, sir.

Q. For the same purpose?

A. For the same purpose.

Q. Is that practice universal in the Alaska Steamship Company's fleet on the various vessels that you have been employed upon?

A. On every one of them that I know of.

Q. Every one of them?

A. Yes, sir.

Q. Were the azimuth books and log books for the voyage in 1934, while you were master, left aboard the vessel when you left her?

A. Yes, sir.

Q. In the pilot house, or chart room, or wherever it was?

(Testimony of William McDonald.)

A. Yes, sir. They were left in the pilot house.

Q. Captain, did you take out any vessels from the yards in 1935 on their first voyage? In other words, were you a master of a vessel that was broken out at that time?

Mr. Ryan: I am sorry, but I was not paying attention. What was that question?

(Question read)

A. I don't think I was. I went on the Northwestern then, but I think she was running all winter when I went on her.

Q. Have you ever done that, Captain?

A. Yes, I have.

Q. Captain, while bringing a vessel out of the yards in the [843] spring what did you find as to her compasses, and by that I mean, did you find any material effect that her compasses may have undergone during her laying-up in the yards?

A. No.

Mr. Ryan: Just a minute. I will object to that on the ground that the proper foundation has not been laid. There have been no ships identified, and the question is not asked with reference to this ship.

The Court: I think that that is a reasonable objection.

Mr. Long: I think so.

The Court: I think you should lay the foundation for that.

Mr. Long: Yes.

(Testimony of William McDonald.)

Q. (By Mr. Long) What ships, Captain, from your recollection have you taken out of the yard in the spring?

A. The "Cordova".

Q. The "Cordova"?

A. Yes, sir.

Q. Any others that you remember—either as master or navigating officer—second officer?

A. It is hard for me to remember the way that they run how many I was on when they came out of the yard, but I was on most of them—I was on every one of them coming out of the yard.

Q. Well, have you been on the "Depere", which is a sister ship of the "Denali", coming out of the yard at that time?

A. No. [844]

Q. Or on the "Derblay"?

A. No, sir.

Q. Or on the "Oduna"?

A. No, sir.

Q. You have not?

A. No, sir.

The Court: We will take an adjournment at this time until 2:00 o'clock this afternoon.

(Whereupon an adjournment was taken at 12:00 o'clock M., October 21, 1937, to 2:00 o'clock P. M. October 21, 1937.) [845]

October 21, 1937,  
2:00 O'Clock P. M.

The Court: In the future, in respect to the case on trial, may I ask that all persons connected with

the trial be in their places at the opening of court, promptly. You may proceed.

Mr. Bogle: If Your Honor please, as I indicated before lunch, we have subpoenaed the United States Inspectors to testify as to the annual inspections, and with the consent of counsel I would like to interrupt Capt. McDonald and put them on.

The Court: Is that agreeable?

Mr. Ryan: Yes.

The Court: You may do so.

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RICHARD G. ROBINSON

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name, please?

A. Richard G. Robinson.

Q. Mr. Robinson, are you an employee of the Department of Commerce, U. S. Steamboat Inspection Service?

A. Yes, I am.

Q. In what capacity are you employed?

A. I am a U. S. Assistant Inspector of Boilers.

Q. You are here today in response to a subpoena?

A. Yes. [846]

Q. And that subpoena is a subpoena duces tecum to produce your records and files in connection with your inspection of the steamship "Denali"?



(Testimony of Richard G. Robinson.)

A. Yes.

Q. Which was your inspection, January?

A. January, 1935.

Q. January, 1935 and April, 1935?

A. January 31, 1935 is mine.

Q. Have you those records with you?

A. No, I have not.

Q. Why did you not bring the records?

A. We are not allowed to take any files or records from the office, by order of our local inspectors.

Q. You have a wire in your possession from the Assistant Secretary of Commerce defining the procedure in that respect?

A. Yes; I have it here.

Q. Will you let me see that, please?

A. Yes. (Witness produces document.)

Q. In response to this subpoena did you wire to Washington for permission to produce the records?

A. Yes. The local inspectors wired this morning, but had not received an answer by the time we had left to come up here, so that was handed to me by the local inspectors to explain their status in the case.

Q. I notice that it suggests that in matters of this kind you should confer with the United States Attorney. Do you know whether they have conferred with him?

A. I couldn't say.

Q. In any event, you are not, under the rules of the depart- [847] ment, authorized to produce

(Testimony of Richard G. Robinson.)

your notes and records made at the time of the examination?

A. That is right.

Q. Are you personally familiar with the details of what you did in connection with that examination?

A. Yes, I am.

Q. I will hand you Petitioner's Exhibit No. 8, entitled "Certificate of Inspection." I believe that is dated January 31, 1935, isn't it?

A. Yes, it is.

Q. Was your inspection of the steamship "Denali" made prior to the date of the issuance of that certificate?

A. It was started prior to the issuance, but finished on that date.

Q. And so far as the boiler inspection is concerned, you were the representative of the department who conducted that inspection and authorized the certificate, so far as that portion of the vessel was concerned?

A. Yes, sir.

Q. Will you just state briefly, Mr. Robinson, what you did, what inspection you made of the steamship "Denali" on and just prior to January 31, 1935?

A. On the morning of January 29th, the Assistant Inspector of Hulls, Capt. Kelly, and I proceeded to the "Denali", at West Seattle. In his presence I proceeded to the fireroom, and we applied hydrostatic pressure to the three main boilers

(Testimony of Richard G. Robinson.)

and the steam pipes. While this pressure was still on the boilers I examined the boilers externally in every detail, and then the boilers were emptied and I examined them all internally, and made a few recom- [848] mendations for minor little repairs.

From there we then proceeded to examine her equipment, such as fire extinguishers, fire hose, tested the hose, both of us together, and Capt. Kelly inspected his part.

From then we went around and inspected all the different quarters, everywhere through the vessel, examined the electric lighting fixtures, fire extinguishing equipment, wherever it was available, and every dangerous place, and also the deck machinery and such equipment.

On the next day we continued examining her equipment throughout, and on the morning of the 31st they had raised steam on the boilers, and I set the safety valve to release at the proper working pressure under steam, and then tried out the steam fire pump for its efficiency. We tried out the steam steering gear, steam smothering lines to the cargo holds, the steam windlass, and then proceeded to the steam steering gear aft, which was disconnected and put into hand gear, and we examined that.

Q. To what extent did you examine the steering gear?

A. Why, we tried it under steam from the pilot house, from the wheel in the pilot house, to see that it performed, from hard over in one direction

(Testimony of Richard G. Robinson.)

to hard over in the other direction, and then put it back amidships, until we were satisfied that it was in good operating condition.

Then the steam is shut off and it is disconnected from the steam gear and put in the hand gear, when it is tried hard over in each direction, to see that the hand gear is proficient. And then it is put back amidship and con- [849] nected back onto the steam gear again.

Q. During that process, do you have one man aft and one man at the wheel?

A. As a rule we do. We have a mate at the wheel, and there is a speaking tube, generally, so they can converse, and we put the helm over both ways, and then put it back amidships. And there is an officer at the wheel in the pilot house to see that those orders are carried out correctly.

The Court: Try to state what was done here, in this particular instance.

Mr. Bogle: Yes.

The Witness: That was the exact procedure.

Q. As a result of that examination, will you state to the Court just exactly what you found as to the fitness of the "Denali"?

A. Why, we found the vessel was fit in all respects, and seaworthy.

Q. How long have you been in the Service, Mr. Robinson?

A. Eighteen years and a half.

Q. Was Mr. Murphy, of the Alaska Steamship Company, present when you made your inspection?

A. Yes, sir.

(Testimony of Richard G. Robinson.)

Q. Had you inspected other vessels of the Alaska Steamship Company prior to this?

A. Yes, sir.

Q. Was Mr. Murphy present at the other inspections?

A. Yes, sir.

Q. How long have you known Mr. Murphy?

A. Well, since his appointment to the Alaska Steamship Com- [850] pany. I cannot tell you just what year that was.

Q. And you worked in fairly close association with him, your work brought you in contact with him?

A. Almost every month, and sometimes oftener. That year we inspected very nearly all of their vessels.

Q. From your experience with Mr. Murphy what would you say as to his efficiency and qualifications for the position he held over there as superintendent of maintenance and repair?

A. Personally, I considered him a very competent and efficient superintendent.

Mr. Bogle: That is all, Your Honor.

The Court: You may cross-examine.

### Cross Examination

By Ryan:

Q. Did you make any examination of the compasses on the "Denali"?

A. No, sir.

Q. Did you make any examination of any of the navigational equipment on the "Denali", other than this steering gear?

(Testimony of Richard G. Robinson.)

A. No, sir.

Q. Do you know what navigational equipment she had on board, of your own knowledge, and specifically what navigational instruments, and what books, and that sort of thing?

A. No, sir. I passed through the pilot house, of course, in the course of this inspection, and noticed that she had her compasses.

Q. Then you do not mean to say that you found that the "Denali" was seaworthy in all respects? You found her [851] seaworthy insofar as the respects were concerned regarding which you made a direct examination, is that correct?

A. That is correct.

Q. And it is limited to that extent?

A. Yes.

Mr. Bogle: Yes; I will admit that. I tried to limit it to that.

Q. In other words, you would not think of letting the "Denali" go to sea without some further inspection of her by somebody else in the respects in which you had not examined her, isn't that so?

A. That is right, sir.

Q. You didn't see Mr. Kelly make any examination of the compasses of the "Denali", did you?

Mr. Bogle: I object to that as not proper cross-examination.

The Court: Objection sustained. You can make him your own witness if you wish.

Mr. Ryan: If the Court please, can I be heard on that for just a moment?



(Testimony of Richard G. Robinson.)

The Court: The ruling will stand. You can make him your own witness if you wish to inquire into those matters, now or later.

Mr. Ryan: I prefer to take it up under cross-examination.

Q. (By Mr. Ryan) Where was the "Denali" when you made this inspection?

A. At the Alaska Steamship Company yard in West Seattle.

Q. What was her heading?

A. I don't understand that question. [852]

Q. How was she lying at the pier, parallel with the shore line or not?

A. That I couldn't remember. They have so many boats there that I could not tell you the position the "Denali" was lying in.

Q. How many boats were there at the time you examined the "Denali"?

A. I will have to make a guess, if you want that. There must have been seven or eight.

Q. Was the "Denali" the nearest to the pier? Did you go on board her from the pier or did you go over some other vessel to get to her?

A. I can't remember that. I will tell you, we would inspect the boats as they came along. At that time we were inspecting three boats, the "Oduna", and I think the "Derblay", and the "Denali", and we went from one to the other, and which position she was lying in I couldn't tell you.

Q. How were the other two ships lying, if you remember?

(Testimony of Richard G. Robinson.)

A. Well, some were lying parallel to the dock and some were not.

Q. Are you sure there were some lying not parallel with the dock, with only seven or eight ships in there?

A. Some of the smaller ones were not, I think.

Q. They wouldn't be of the type of the "Denali", would they? Now, when did you begin your examination, at what time of day?

A. I think nine o'clock A. M.

Q. On what date?

A. On January 29, 1935.

Q. When did you finish your examination? How long did you [853] work on that day?

A. I think we worked until past noon, and then went to one of the other boats. I don't remember which one. You see, if I may say in this way—

Mr. Long: Just complete your answer.

The Witness: We went from one to the other.

Q. Then after noon of that date when was the next time you went on board the "Denali", in the course of your inspection, if you remember?

A. The next morning.

Q. At what time?

A. I think at nine o'clock.

Q. How long did you stay on board the "Denali" on that date? That would be February 1st, would it?

A. No, sir; the 30th.

Q. January 30, 1935?

A. Yes. I think we worked until noon time again on the "Denali", and then passed to the other vessels.

(Testimony of Richard G. Robinson.)

Q. So each day you went on the "Denali" first in the morning?

A. Until we finished, yes.

Q. When did you next go on the "Denali" after that, after January 30, if at all?

A. January 31.

Q. When did you go on board her?

A. They came and notified us when they were ready, and I really couldn't tell you the hour. It was in the forenoon.

Q. How long did you stay on board her on the 31st?

A. I think at least three hours.

Q. Then when did you go on board her again?

A. Well, we were finished. [854]

Q. The nature and extent of your inspection is fully disclosed by what you have testified on direct, is that right?

A. Yes, sir.

Q. That is, you made a hydrostatic test on the boilers and the steam lines, and the test of the steering gear, as you have described, is that right?

A. I couldn't understand your first word.

Q. And the fire extinguishing equipment, and the fire hose?

A. And the fire hose, yes, sir.

Q. That was your total examination, you, yourself?

A. Well, I examined all the quarters and the holds also, all through the holds, for their bilges, and the steam smothering equipment.

(Testimony of Richard G. Robinson.)

Q. The bilges and the steam smothering equipment?

A. Yes, sir.

Q. Anything else on your personal examination?

A. All her electrical equipment, all throughout the vessel, also.

Q. What electrical equipment did she have in the way of generators?

A. She has two generators, as I believe. They are about 15 kilowatts each.

Q. Where were they located?

A. They were located in the engine room on a raised platform above the deep load line.

Q. What kind of current did they generate?

A. D. C.

Q. Direct current?

A. Yes, sir. [855]

Q. Where did the lines from those generators run? I will put it this way; what lines from those generators ran up on the bridge?

A. The lines to the bridge?

Q. In the pilot house.

A. For her running lights and the lights in the pilot house, for navigation. They also have a compass light, and ordinary lights in there to see by.

Q. And there is a ground on one end of them, consisting of the ship's side, isn't that right?

A. No, sir. The ship's side is not a ground any more in this style of lighting.

Q. Do you remember on the "Denali" what the situation was?

(Testimony of Richard G. Robinson.)

A. Yes, sir. She had direct connection with the dynamos, the regular system. The hull is not used any more as part of the system as a ground.

Q. Have you a note of that anywhere?

A. No, sir. We just make it as a D. C. current.

Q. Did you examine to ascertain that fact on the "Denali"?

A. Yes. [856]

Q. Who—you said that Mr. Murphy was with you on this examination part of the time, was he?

A. Part of the time, yes.

Q. Who else was with you, if anybody?

A. Benjamin Parker was acting as chief engineer but attended me in the engine room.

Q. Anybody else?

A. And on deck I went along with Captain Kelly and the first officer.

Q. Who was the first officer?

A. I cannot tell you his name now.

Q. How do you know that he was the first officer?

A. Because he was acting first officer. He represented the ship at that time and we always have the first officer there to go around when the master is not present.

Q. I see. There was no master assigned at all to the "Denali" in January, 1935, so far as you know, was there?

A. No, sir.

Q. There was a man that you called the chief officer?

(Testimony of Richard G. Robinson.)

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And nobody else besides this chief officer, isn't that correct?

A. Well, he had all his help. They have considerable help. There must have been eight or ten men working there in the engine room and fire room at this time to help in this inspection.

Q. To help in the inspection? [857]

A. Yes, sir.

Q. Just temporarily assigned there to help in the inspection?

A. That is right.

Q. And that is also true of the first officer?

A. Yes, sir. He has a deck crew.

Q. There especially assigned to help you in the investigation?

A. In the inspection.

Q. Yes.

A. Yes.

Q. You never saw Captain Healy around there, did you?

A. I think Captain Healy was not connected with that vessel at that time. I probably saw him in the yard.

Q. Or Pilot Obert?

A. No, Pilot Obert was not there at that time.

Q. Or Mr. Cleasby?

A. I don't know any gentleman by that name that I can recall now.



(Testimony of Richard G. Robinson.)

Q. Or Mr. Lawton?

A. No.

Q. You don't remember him?

A. No.

Q. Or Mr. Larson, second mate, Larson? Do you remember him? Do you know him?

A. Yes, I know him.

Q. Did you see him there?

A. I have to acknowledge that I do not remember him being there.

Q. You do not? [858]

A. No.

Mr. Ryan: That is all.

#### Redirect Examination

By Mr. Bogle:

Q. Mr. Robinson, was the first mate on deck or in the engine room to aid in the work or assist you in making your inspection?

A. Yes, sir.

Q. I will ask you if you made such an inspection to such an extent as was required by the United States Steamboat Inspection Service?

Mr. Ryan: I object to that as calling for a conclusion of the witness, and on the further ground that it is speculative. He can ask him what examination he made. The effect of it is not for him to say.

The Court: Well, it is leading. If you can direct your question in such a way or frame it in such a way so that it will not suggest the answer, you may do so. You can ask him if he had any standard by

(Testimony of Richard G. Robinson.)

which he could determine the fairness or efficiency of his inspection. You may do so if you can.

Q. (By Mr. Bogle) I will ask you this. There are certain regulations, are there, of the Government with reference to inspections?

A. Yes, sir.

Mr. Ryan: I object to that on the ground that that is not proper cross examination.

The Court: That objection is overruled. [859]

Q. (By Mr. Bogle) In making this examination did you comply with those regulations?

Mr. Ryan: I object to that as calling for a conclusion on the part of the witness and on the further ground that it is speculation. That is the very point that the Court has to determine and it is not competent for the witness to answer that.

Mr. Bogle: It seems to me that that is quite proper, if Your Honor please, in the case, especially since the Government through its own regulations will not permit his witness *witness* to produce his notes which will show all the details of his examination. In that case it is proper for him to testify that he did everything that was necessary or required by the United States Inspection Service regulations.

Mr. Ryan: If it is put on that ground I have no objection to his asking this man after the notes are available. But that does not change the law.

Mr. Bogle: Very well.

Q. (By Mr. Bogle) I would request you, Mr. Robinson, to advise me if you get permission from

(Testimony of Richard G. Robinson.)

the secretary of commerce to produce your notes.  
Will you do so?

A. If I get permission from the secretary of commerce?

Q. Yes, sir, to produce your notes.

A. Well, we are really detailed by the local inspector, and if he requests me to produce them I will do so.

Q. Yes. I say, will you advise me?

A. Yes, sir.

Q. And then I will take it up with him.

A. Yes, sir. [860]

Q. You want this file, do you?

A. Yes, sir.

Mr. Bogle: That is all.

(Witness excused)

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Mr. Bogle: Captain Kelly, take the stand, please.

FRANCIS KELLY,

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name?

A. Francis Kelly.

Q. Are you in the employ of the Department of Commerce, U. S. Inspection Service?

A. Yes, sir.

(Testimony of Francis Kelly.)

Q. In what capacity?

A. Assistant Inspector of Hulls.

Q. And you are here in response to a subpoena duces tecum to appear with your books and notes relative to an inspection which you made of the Steamship "Denali" around January 30, 1935, and April 4, 1935?

A. January 31, 1935, sir; not April 4th.

Q. Well, the subpoena covers them both, Captain. I was merely trying to be accurate. But you are here in response to such a subpoena?

A. Yes, sir. [861]

Q. Are you in a position to produce your records?

A. No, sir.

Q. Of that inspection?

A. No, sir.

Q. Is that the same reason as stated by Mr. Robinson?

A. Yes, sir.

Q. Captain, how long have you been with the United States Inspection Service?

A. Eighteen years.

Q. In your capacity as local inspector of hulls?

A. No. Assistant inspector of hulls.

Q. You are now assistant inspector of hulls?

A. Yes, sir.

Q. And what was your seafaring experience prior to the time you joined the U. S. Inspection Service?

A. I have been all my life at sea up to that time.

(Testimony of Francis Kelly.)

Q. What licenses do you hold, or did you hold when you joined this service?

A. Master.

Q. How long had you held a master's license?

A. About twenty-five or twenty-six years.

Q. Have you had any experience as an officer in navigating—on boats navigating to and from Alaska?

A. Yes, sir.

Q. Did you have any experience as a master on boats navigating to Alaska?

A. Yes, sir.

Q. Was that over a period of a considerable number of years?

A. Most pilots, sir.

Q. How many years would you say, Captain, that you were [862] master and pilot on Alaska boats?

A. For the Alaska Steamship Company about seven or eight years I should say—pilot and master.

Q. And were you—

A. (Interposing) That is as near as I can come to it now, sir, it is so far back.

Q. But you were in the employ of the Alaska Steamship Company for seven or eight years?

A. I was steady there for ten years prior to joining the Steamboat Inspection Service.

Q. And then have you been employed by some other company in Alaska prior to that time?

A. Yes, sir. By the Pacific Coast Steamship Company.

(Testimony of Francis Kelly.)

Q. For how many years?

A. I couldn't tell you, sir. It is so many years—it is thirty years ago.

Q. Thirty years all together in Alaska?

A. No, no. Since I went there.

Q. Yes. All right. Captain, did you as an assistant inspector of hulls inspect the Steamship "Denali" at West Seattle on or about January 31, 1935?

A. Yes, sir.

Q. For her annual certificate?

A. Yes, sir.

Q. I show you Petitioner's Exhibit 8, entitled "Certificate of Inspection"—

A. (Interposing) Yes, sir.

Q. (Continuing)—"Steamship 'Denali' "?

A. Yes, sir.

Q. Was this inspection of this vessel made prior to the [863] issuance of this certificate marked Petitioner's Exhibit 8?

A. Yes, sir.

Q. And was this certificate issued upon your report and the report of the local inspector of hulls?

A. And on my partner, the inspector of boilers.

Q. I beg your pardon, Captain, I mean boilers.

A. Yes, sir.

Q. Now, Captain, you haven't your notes?

A. No, sir.

Q. Now, do you remember about what your inspection consisted of—the inspection of hulls?



(Testimony of Francis Kelly.)

A. My duty is to inspect the entire hull of the ship—the structure and the condition of the ship, and report on it. If the report is satisfactory then the steamship service will issue a certificate to the ship.

Q. And if your report is not satisfactory?

A. They don't get a certificate.

Q. Could you tell us briefly just, approximately, what you did in your inspection as inspector of hulls before this certificate was issued?

The Court: With respect to this particular inspection job.

A. Yes.

Q. (By Mr. Bogle) Yes. State it, I said, as inspector of hulls on this job.

A. The first thing I did when going on board on January 29th, I went down in the fire room with the boiler inspector and I witnessed the pressure—the hydrostatic pressure that is put on the boilers. I have got to witness [864] that, and I make an entry in my—I make an entry in this book—this hull book, as I call it. Then I go and inspect the ship throughout—the condition of the ship, taking in the structural part of the ship, all frames, the beams and decks, and the life saving and fire fighting equipment.

Q. You did that on the “Denali” on January 29th and January 30th?

A. On January 31st. That is the date that I finished my inspection.

(Testimony of Francis Kelly.)

Q. Did you take any part in testing the steering gear?

A. Yes.

Q. Will you just state what you did to inspect the steering gear?

A. We unshackled the chains off of the quadrant on the rudder head and put it in the hand gear, put the helm hard over each way, and back amidships, and satisfied myself with the diamond screw that is in that case and that is over the wheel gear on the poop that everything is in good condition. If it is not I report it as such.

Q. Did you make any inspection of the gear from the pilot house——

A. (Interposing) Yes, sir.

Q. (Continuing)—to the quadrant?

A. Yes, sir.

Q. Captain, did you make any inspection of this vessel's compasses?

A. I examined the compasses, and I tried then to find out if that compass is sluggish. That is very easily done with a pocket knife or a steel marlin-spike, that it is [865] not sluggish, that it is not stuck, that the card is in good condition and the gimbels are working properly, and that is all that I could do with the compass.

The Court: Did you do that in this case?

The Witness: Yes, sir.

Q. (By Mr. Bogle) Did you notice these deviation cards?

(Testimony of Francis Kelly.)

A. Yes, sir, these deviation cards are posted in the pilot house, framed on the glass.

Q. For each compass?

A. Yes, sir, the standard and pilot house.

Q. At the time that you were aboard was the azimuth or compass books aboard?

A. Yes, sir.

Q. Did you make any examination of this book?

A. Yes. I compared that with the last bearings that were taken and azimuths that the officers had taken. I compared that with the deviation cards that are posted in the pilot house, and I found very little if any difference in the bearings that they took of the compasses when the ship was in operation.

Q. Did you make an examination of the compass to determine whether it was properly set?

A. Yes, sir.

Q. As to its physical condition?

A. Yes, sir.

Q. Were there any bubbles?

A. No, sir.

Q. And as a result of comparing the azimuth book with the last deviation card did you make any recommendation with reference to that compass?

[866]

A. No, sir, I did not.

Q. If there had been an unusual deviation what would you have done in the line of your duty?

(Testimony of Francis Kelly.)

A. I would have recommended that the compass would be looked to—attended to.

Q. In your experience as a ship master and from your experience as a local inspector, whose duty is it in the ship's personnel to determine the condition of the compass—I mean the deviations, not the physical conditions?

A. Well, any watch officer will do that at every possible chance they get, sir. When the officer is on watch that is the standing order from the captain to do that at all times.

Q. Under what circumstances from your experience, is there an adjustment made by these compass adjusters?

A. Well, when you get a compass adjuster aboard—

Q. (Interrupting) Well, whose duty is it to determine that?

A. The compass adjuster. He would change the magnets and such-like which the master—

Q. (Interposing) You do not understand me.

Mr. Ryan: Please do not interrupt.

The Court: Well, the answer is not responsive, I do not believe, to the question. Read the question and the answer.

(Question and answer read)

Mr. Ryan: I think that is responsive.

The Court: It will stand as far as it has gone; the Court does not think so, but you can proceed and ask the witness another question. [867]

(Testimony of Francis Kelly.)

Q. (By Mr. Bogle) Whose duty is it to call a compass adjuster?

A. The master of the ship.

Q. In other words, who determines whether the compass needs adjustment?

A. The master of the ship.

Q. Has that been your experience?

A. Yes, sir.

Q. Captain, what has been your experience with vessels in the Alaskan trade as to the effect of cargo—particularly deck cargo—their possible effect upon compasses?

A. That would depend upon the likelihood of it—how close it is stowed to the compasses, and what it consists of.

Q. Has it a tendency, or is there a possibility that that might affect the deviation of the compasses?

A. Yes, sir.

Q. How does the master determine the exact extent of that deviation after the cargo is on board?

A. As a rule he finds that out in the bay in Seattle before he goes to sea.

Q. In what way?

A. He finds the deviation on the different headings of the ship—

The Reporter: (Interposing) What is your answer after that?

Mr. Bogle: He said “by swinging her in the bay”.

(Testimony of Francis Kelly.)

Mr. Ryan: No, he did not say that. He said, "After the ship goes to sea". [868]

The Witness: No, sir. He finds that out by swinging her in the bay.

Q. (By Mr. Bogle) Now, did you say that, Captain, "by swinging her in the bay"?

Mr. Ryan: Now, please don't do that. I object to that as highly suggestive, and I ask that the last answer be read as the court reporter has it, so that there won't be any doubt about that.

The Court: The objection is sustained. Read the answer that you have, Mr. Reporter.

(Answer read as follows: "He finds the deviations on the different headings of the ship——")

The Court: If the witness wishes to correct the answer that the court reporter has read, if it is not correct, let the witness please correct it or amplify it in such a way as the witness thinks it ought to be in order to make it fully correct.

The Witness: That is correct.

Q. (By Mr. Bogle) Is that your complete answer to the question, Mr. Kelly?

A. Yes, sir.

The Court: All right. You may ask him another question.

Q. (By Mr. Bogle) Then I will ask you this question. Where does he ordinarily find and in what manner does he find those deviations?

A. Well, at the present time in the bay of Seattle he can find it. He knows the magnetic bearings of



(Testimony of Francis Kelly.)

the different objects along the waterfront in Seattle. That is one way. The other is with the sun, of course. [869]

Q. You mean by taking an azimuth?

A. Yes, sir.

Q. Captain, when the cargo is aboard the ship, and in the progress of the voyage I will ask you if there is any accurate, definite way of determining your deviation except by azimuths taken after the cargo is aboard?

A. I don't get that question.

Mr. Bogle: Will you read the question?

(Question read)

A. Yes, by swinging the ship—by taking azimuths and swinging the ship out in the bay before proceeding to sea.

Q. Is it customary, Captain, to take azimuths after the commencement of the voyage and during the progress thereof?

A. Yes, sir.

Q. When you discharge cargo at a way port is it customary and necessary in your judgment to take azimuths to find out the exact deviations at that point of the voyage?

A. Yes, sir. It is always done, sir.

Q. Is there any way of checking your deviations by known courses in Alaska?

A. Yes, sir.

Q. Is that a common way of checking them?

A. Yes, sir, with a man that is running to Alaska, yes, sir. It is very often done as you steer

(Testimony of Francis Kelly.)

that same course perhaps in many places, and it is a great help to check your compasses up when going through a course and steering northeast. When I know that I am going to steer northeast [870] perhaps twenty times on that voyage it is a big help to me later on.

Mr. Bogle: That is all, Captain.

The Court: You may cross examine.

#### Cross Examination

By Mr. Ryan:

Q. Do you know what your record shows—

Mr. Bogle: (Interposing) May I ask one more question, Mr. Ryan?

Mr. Ryan: Yes.

#### Direct Examination

(Continued)

By Mr. Bogle:

Q. Captain, I will ask you if you know whether or not pilots are required by certificate of inspection—

A. (Interposing) What, sir?

Q. Pilots, are they required by the Steamboat Inspection Service?

A. They are not ordered, sir. They can carry them if desired.

Q. They are not required by the service?

A. No, sir, not as long as she has the certified number of officers, the captain and the certified number of officers on board the ship. They can carry them if they wish.

(Testimony of Francis Kelly.)

Q. Do you know whether or not it is customary in the Alaskan trade—it is customary for the Alaska Steamship Company to carry pilots in addition to the crew [871] required by the certificate?

A. Yes, sir.

Q. Captain, does the Inspection Service, its rules and regulations, require the adjustment of the compass by a professional adjuster at any stated period?

Mr. Ryan: I object to that as leading.

The Court: Objection overruled.

A. There are no rules laid down for that in our service.

Mr. Ryan: May I have that question read?

(Question read)

Mr. Ryan: And what was the answer?

(Answer read)

Mr. Bogle: That is all.

The Court: He made an answer with respect to the custom of the Alaska Steamship Company employing and using pilots in the Alaska trade. It is not called to my attention whether his answer was that he does know of it, or whether he meant to say that they did use them. Mr. Reporter, will you turn back to that question and the answer?

(Question read as follows: "Do you know whether it is customary for the Alaska Steamship Company to carry pilots in addition to the crew required by the certificate? A. Yes, sir.")

The Court: You see, the answer to that question would be with reference to whether he knows, he stating that he does know.

(Testimony of Francis Kelly.)

Mr. Bogle: I get the point.

Q. (By Mr. Bogle) Well, does the Alaska Steamship Company carry pilots on all of its vessels in addition to the [872] crew required by its certificate?

A. Yes, sir.

The Court: And did it do so in 1935 in the month of May?

The Witness: Yes, sir.

Q. (By Mr. Bogle) Do you know, Captain Kelly, in your experience with the Inspection Service as to the qualifications of Mr. E. M. Murphy, Superintendent of Maintenance and Repair of the Alaska Steamship Company?

A. The qualifications, as far as I know, are that he is a very efficient man.

Q. And you have had experience with him over a period of how many years?

A. Well, I have known Mr. Murphy when I was in the Alaska Steamship Company before I joined the Inspection Service. I would say that I have known him for the past twenty years.

Q. Was Mr. Murphy present when this inspection was made in January, 1935?

A. He sure was.

Q. Is he customarily present at all inspections of the Alaska Steamship's vessels?

A. He goes from one ship to the other. He is not on each ship every moment of the day, but he is there the principal part of the time.

(Testimony of Francis Kelly.)

Mr. Bogle: That is all.

The Court: Now, Captain, you said that so far as you knew Mr. Murphy was competent, or something to that effect. You limited it by "so far as I know". Now, what do you mean by "so far as I know"? You mean you [873] are not certain in your mind about his competency, or what do you mean?

A. Well, judging by his work, sir, and looking at what he has done around the ships, sir, I would say that the man was a competent man.

The Court: Have you any doubt on that score?

The Witness: None whatever.

The Court: You may cross examine.

### Cross Examination

(Continued)

By Mr. Ryan:

Q. Has Mr. Murphy ever been licensed by your department as a mate or a pilot or a captain of any vessel?

A. I don't know, sir.

Q. You don't know what his experience has been at sea?

A. No.

Q. You don't know whether he has had any experience at sea?

A. No, sir, I cannot say.

Q. Then how do you know what his competency was—competency for what?

(Testimony of Francis Kelly.)

A. As superintendent of the company.

Q. I see. Do you know anything about Mr. Murphy's competency as to compasses, or when they should be adjusted, or anything of that kind?

A. No, sir.

Q. Or anything in connection with the navigation of the ship—his competency in regard to that?

A. No, sir, I cannot say that.

Q. Now, the Alaska Steamship Company, like any other [874] steamship company, was required to have an officer on the bridge who had—who was licensed by the Steamboat Inspection Service as a pilot for the waters through which the ship was traveling, isn't that so?

A. I don't think it is compulsory, sir, in the waters of Alaska for a man to hold a license for those waters in particular.

Q. You——

A. (Interposing) A man of experience who goes up there may not have a license for those waters.

Q. Doesn't the United States Steamboat Inspection Service issue pilot's licenses and endorses pilot's endorsement on the master's license covering the waters going up to Alaska?

A. Yes, if he applies for it and passes the examination.

Q. But you do not think that he is required to do that, is that it?

A. No, sir, not in that way. [875]



(Testimony of Francis Kelly.)

A. (Continuing) There is plenty of men running to Alaska, sir, with experience, and still they never had the endorsement on their license as a pilot.

Q. Who is your superior?

A. In Seattle, sir? Capt. Daniel Hutchings.

Q. He is the one who signs the licenses, isn't he?

A. Yes, sir.

Q. So you think it is proper for the Alaska Steamship Company to send a ship out with a man who doesn't have a pilot's endorsement, or pilot's license, on a trip to Alaska, Metlakatla and Ketchikan, Alaska, is that right, from Seattle?

A. No, sir; I want a man of experience as a pilot.

Q. Then what do you mean?

A. He may not have the papers, he may not have passed that examination for it, but he has had years of experience in them waters.

Q. He has had years of experience?

A. Pilots running to Alaska.

Q. Which pilot are you talking about, any pilot on the "Denali"?

A. No.

Q. Now, do you know what your record shows with reference to the compasses on the "Denali"?

A. I reported it in good condition, sir.

Q. Are you sure about that?

A. Yes, sir.

(Testimony of Francis Kelly.)

Q. How does your record read, if you recall it?

A. "Reported good."

Q. Are you sure those are the words? [876]

A. Yes, sir.

Q. Who reported it good?

A. I did, sir.

Q. The words you used, you think, were "reported good", is that right?

A. Yes, sir. That is taking a report from the chief officer. I asked him what was the condition of his compass and he says "It is in good condition, and then I examined it.

Q. So then you wrote down that it was reported in good condition, is that right?

A. Yes.

Q. Is that what you mean to say?

A. Yes.

Q. Didn't you actually say "said to be in good condition"?

A. No; "reported good." That is all the words we used.

Q. At any rate, you asked this man who called himself the first officer, and who had been temporarily assigned there to assist you in this inspection, if the compass was in good condition, and he said "Yes", is that correct?

A. Yes.

Q. And so you wrote down "reported in good condition"?

A. "Reported good," yes.

(Testimony of Francis Kelly.)

Q. Now, it is not the usual practice of an assistant hull inspector to go down and tamper with compass on a ship during the course of annual inspection here in Seattle, is it?

A. Just examine it, sir; do as much as you can with it, sir.

Q. It is usual for them to take the word of somebody on the ship, or somebody with the company, with reference to the [877] condition of a compass, is that right?

A. Yes. That is the first thing we find out, and then we examine it afterwards, sir, ourselves.

Q. You are sure about that?

A. Yes, sir, certain.

Q. Now, just what test did you make of this compass; how did you test it?

A. On some of them ships we take——

Q. (Interposing) I am not asking you about some of the ships, I am asking about the "Denali" in January, 1935. Did you test it for a bubble?

A. Yes.

Q. How did you test it for a bubble?

A. It is hard to remember three years back, sir; exactly. I am telling you the custom. I can use my pocket knife.

Q. I would like to know what you did on the "Denali". If you do not remember, say so.

The Court: He is asking you to confine your answer to your recollection of what you did on this particular inspection job on the "Denali".

(Testimony of Francis Kelly.)

The Witness: Yes, sir.

The Court: Do that if you can, and if you cannot, say so.

The Witness: I can remember I used my pocket knife.

Q. (By Mr. Ryan) Did you do that; did you make an inspection for bubble, that is what I am asking about? Did you examine the compass of the "Denali" to ascertain whether or not there was a bubble? Did you or did you?

A. Yes, sir, I did, sir.

Q. What test did you make? Describe it in detail. [878]

A. I would shake the compass with my hand, by putting it on the glass and working it in the gimbals to find out if there were any bubbles or leakage in the compass.

Q. That is all you did?

A. Yes, sir. And then tried to see that the card was not stuck, that it was working freely.

Q. What test did you make for that, the working freely of the card?

A. Using a pocket knife, sir, a steel knife, by bringing it close to the compass. By doing that it will shift the compass card, and it will work on the paper. Take it away and it goes back to its original position.

Q. So you pulled a pocket knife out of your pocket and held it near the compass?

(Testimony of Francis Kelly.)

A. Yes, sir; and it would pull the compass perhaps a point or point and a half out of position, and it would sway across on the pivot.

Q. And from that you think you could determine whether or not the compass card was in good condition?

A. That is the only means I have, sir.

Q. At least, that is all you did on the "Denali"?

A. That is all.

Q. What other test did you make of the compass?

A. No more than that, sir.

Q. What?

A. No more than that, sir.

Q. Nothing more than you made a test for the bubble—

A. Yes, sir; and to see that the compass card—

Q. You describe what you did—and then you pulled out a pocket knife and held it near the outside of the com- [879] pass?

A. To see that it was not stuck.

Q. Did you do anything else with reference to the compass at all, so far as the nature or extent of your examination was concerned?

A. Only swung it in the gimbals, that is all.

Q. How did you swing it in the gimbals?

A. You can turn it over in the gimbals, sir; half ways over in the gimbals.

Q. You turned the compass over half way?

(Testimony of Francis Kelly.)

A. Half way, like that; athwartship and fore and aft, and see that everything was in working order.

Q. That was the only test you made, and from that you concluded it was in good order?

A. Yes.

Q. So the three things you did, first, that test for the bubble, then that for the compass card, and the swinging in the gimbals. Did you make any other test of the compass?

A. No.

Q. Which compass was that that you tested in that way?

A. There is one in the pilot house, sir, and a standard on top of the pilot house.

Q. Is there a pelorus?

A. There was one in the chart room, sir.

Q. There was one in the chart room?

A. Yes, sir.

Q. It was not in position, though, was it?

A. No, sir.

Q. That is the only one on the ship?

A. The only one I saw aboard the ship, sir, was that one in [880] the chart room.

Q. Where was the stand for the pelorus, if any, if you know?

A. I can't remember, sir. It is too far back.

Q. You did not use that, anyway?

A. No, sir.

Q. In any of your examinations?

A. No, sir.



(Testimony of Francis Kelly.)

Q. Did you examine the bearing board on the ship, or was there one?

A. I cannot say, sir. I couldn't remember that.

Q. Then you didn't take any bearings on anything, did you?

A. No, sir.

Q. No azimuths at all?

A. No, sir.

Q. What magnetic heading was the "Denali" on at the time you made your examination?

A. That I couldn't remember, sir.

Q. You made no note of it?

A. No, sir.

Q. Was she lying parallel to the shore, with the dock, or not?

A. Well, some docks there are lying north and south, almost, and there is another one east and west, and which one she was at, sir, I couldn't tell you. I guess there was seven or eight ships there at the time. Now, she could be lying with the dock east and west, or lying at the other one, north and south, sir. I don't remember that.

Q. You do not remember which way she was lying?

A. No, sir, I don't remember that.

Q. The magnetic direction or heading, as you might call it, of that dock is what? [881]

A. At West Seattle?

Q. Where the "Denali" was lying.

A. Oh, I couldn't give you that, sir. I don't

(Testimony of Francis Kelly.)

know it, not to be exact. It is in a north and south direction, one dock is, and another one is in an east and west direction.

Q. North and south what, true, magnetic or compass?

A. I couldn't say for that. I never tried it out.

Q. How do you know it was north or south, then?

A. In a north and south direction.

Q. How do you know it was in a north and south direction?

A. It might be north by east or it might be north by west.

Q. How do you know that?

A. I know the trend of the Bay in Seattle harbor to be almost north and south, sir.

Q. What charts were on board the "Denali" at the time you made your examination, if any?

A. There was drawers in the chart room full of charts.

Q. Charts of various sorts?

A. Yes, sir. They were full right up, sir.

Q. Could you tell us exactly what navigational equipment the "Denali" had, if you know of your own knowledge, at that time, on board?

A. Outside of the compasses?

Q. Yes.

A. The pelorus and the compasses.

Q. How many compasses?

A. Three.

(Testimony of Francis Kelly.)

Q. What were they?

A. One in the pilot house, one on the top, and there was one aft of the hand steering gear. [882]

Q. Are you sure about that?

A. Yes, sir.

Q. Did you look at it?

A. Yes, sir.

Q. Did you test that the same as the others?

A. Just the same as the others.

Q. You went around and tested all three in the way you described?

A. Yes.

Q. With a knife, and then you rolled the gimbals up and down?

A. Yes, sir.

Q. And then you shook it in your hand?

A. Yes, sir.

Q. That is the test you made?

A. Yes, sir.

Q. You didn't open up any of the compasses, did you?

A. No, no, I did not.

Q. You didn't take anything apart or remove any nut or do anything of that sort?

A. Oh, no.

Q. Was the "Denali" lying on the same heading every time that you went on board her?

A. Them three days she was, yes, sir.

Q. Those are the only three days you were aboard?

(Testimony of Francis Kelly.)

A. That is all, sir.

Q. How many hours all together were you on board the "Denali" during the course of your total inspection?

A. As near as I can go, three days; say twelve hours, sir.

Q. How many ships did you examine during that three days, [883] or did you inspect?

A. We went from one to the other, done some on one and then had to go to another, and when they were ready with the boilers—there is a lot of men standing by pumping pressure and we have to go and attend to that and get the pressure on the boilers so that we wouldn't keep those men all standing there.

Q. The question was, how many ships did you inspect on those three dates that you have testified to here?

A. I was inspecting the "Denali", the "Derblay"—the "Denali", the "Derblay" and the "Oduna", as near as I can remember. I was inspecting them on them days.

Q. On those three days you found it necessary to give twelve hours to the "Denali"?

A. Yes, sir; about that.

Q. What are your working hours a day; what were your working hours on those three days?

A. We would go to work at nine o'clock in the morning, until 4:30, sir.

Q. Was anybody present when you made any of

(Testimony of Francis Kelly.)

those three tests of the compasses of the "Denali" that you have described?

A. There was a mate there.

Q. What was his name?

A. I am not sure of the name, sir. I think it was Larson, as near as I can remember.

Q. Do you know Second Mate Larson of the company or not?

A. This man that I have reference to, sir, is a master, has master's papers, I know.

Q. Do you know Second Mate Larson, who was on this ship when she was lost? [884]

A. I cannot say I do, sir.

Q. That is not the same man you are talking about, is it?

A. No, sir.

Q. Didn't you report to your office in the Federal Building each morning before you went to work?

A. Yes, sir.

Q. Before you went to work over at West Seattle?

A. Yes, sir.

Q. What time did you report at your office in Seattle before you went over to West Seattle, on each of those three days?

A. To the best of my opinion, sir, about 8:35 in the morning.

Q. To whom did you report?

(Testimony of Francis Kelly.)

A. We go in the office and get our orders from the Local Inspector.

Q. And you think you were there at 8:35 on each of those three mornings?

A. Yes, sir.

Q. With reference to the "Denali"?

A. Yes, sir. That is generally our time.

Q. Then when did you report back at that office?

A. At 4:30, sir.

Q. You arrived there at 4:30?

A. About that, sir.

Q. Those are the only three days you were on board the "Denali" at all during those years, 1934 and 1935?

A. That is those three days in January?

Q. When you were making your inspection, is that correct?

A. Yes, sir. January, 1935, sir.

Q. The three days that you specified? [885]

A. Yes, sir.

Q. She was lying in one heading all the time?

A. As near as I can remember, sir.

Q. Now, will you describe the appearance of the azimuth book on the "Denali" that you saw, if you saw it. Do you remember the azimuth book on the "Denali?"

A. Yes, sir.

Q. Will you just tell me what it looked like from the outside, the cover, what it said on it?



(Testimony of Francis Kelly.)

A. No; I can't remember that, sir. I couldn't remember that.

Q. Tell me where that azimuth book was stowed, just where it was on the "Denali"?

A. It was in the pilot house, in a drawer.

Q. In a drawer, yes, sir.

Q. Did you pull out the drawers and look in them, is that it?

A. Yes, sir. I asked for it, sir.

Q. You asked for it?

A. I asked this mate to show me his compass error book and he got it out for me out of the drawer in the pilot house.

Q. On what date did that azimuth book start, do you remember, the one that was on board in January, 1935?

A. I don't remember that, sir.

Q. Can you give us any idea?

A. No, sir, because I don't know what date the ship laid up. I couldn't tell you that now. It is too far back for me to remember.

Q. You know there are short compass adjusters here in Seattle, don't you?

A. Yes, sir.

Q. And you know the steamship companies hire those compass [886] adjusters to adjust compasses, don't you?

A. Yes, sir.

Q. You did not ascertain yourself by observa-

(Testimony of Francis Kelly.)

tion any deviation of any heading of the "Denali" at any time, did you?

A. No, sir.

Q. And you couldn't possibly do it, under the circumstances, could you?

A. No, sir.

Q. With her lying on that one heading there?

A. No, sir.

Q. What deviations did you find in the azimuth book of the "Denali"?

A. Very little.

Q. Do you recall what deviations you found?

A. No, sir; I cannot recall the amount.

Q. You cannot recall?

A. No, sir.

Q. You made no record or note of it at all?

A. No, sir.

Q. Did you ever make any record anywhere that you had examined the compasses of the "Denali", or that you had examined the azimuth book or compass book of the "Denali"?

A. We do not make a note of it, no, sir.

Q. You never did?

A. No, sir.

Q. Don't you ordinarily make a record of what you do in your inspections?

A. Yes, sir.

Q. How do you account for the fact that you didn't make any record of this? [887]

A. I found the compasses in good condition, and

(Testimony of Francis Kelly.)

reported good, and I stopped at that.

Q. But you did not report "I found them to be in good condition" at all, did you?

A. No, sir. If I found them in bad condition I would report it.

Q. Yes, but if you had made an examination and had found them in good condition you would have said that you found them in good condition, wouldn't you?

A. No, sir. We don't as a rule do that.

Q. Do you consider a deviation card as an essential part of a ship's equipment or not?

A. I do, sir.

Q. Why?

A. Well, it is a very good thing; I know my compasses are being adjusted, they are steady, and the company adjuster makes out a deviation card. Of course I am not going to start out with that as being correct, that card, because maybe I find it is not, it is out a little, and I have to get my own bearings afterwards to satisfy myself.

Q. After the compass adjusters here at Seattle—

A. Yes, sir.

Q. (Continuing) —adjust the compasses on the ships—

A. Yes, sir.

Q. (Continuing) You find that they are incompetent for their work, and that there are deviations other than those that show, is that correct?

A. Incompetent, did you say, sir?

(Testimony of Francis Kelly.)

Q. Read the question. (Testimony read.)

A. No, sir. [888]

Q. Then what did you mean by saying that when there is a deviation card on the ship you find it wrong, or in substance that?

A. Due to the iron and stuff that perhaps is being put aboard the ships since the compass was adjusted.

Q. Well, one way to find out whether a compass is in good condition is to have a competent compass adjuster look at it and examine it, like you have a watch repairer look at a watch and say, "I have examined that and that compass is in good condition." Isn't that right? That is the satisfactory way to find out whether a compass is in good condition?

A. No; I wouldn't say so, sir.

Q. You would not?

A. No, sir; because you may have a compass aboard the ship every week, with the different cargoes——

Q. (Interposing) Do you think there is any advantage in having a compass adjuster adjust the compasses on a ship?

A. Oh, yes.

Q. What is the advantage?

A. No doubt he steadies the compass.

Q. He keeps it constant on a given heading?

A. Yes.

Q. That is one of the principal things?

A. That is one of the principal things, yes.

(Testimony of Francis Kelly.)

Q. When the deviations change on a compass that makes it over compensated, isn't that so?

A. Yes.

Q. Then the compass is pranky or cranky, as they call it; isn't that right, and inconstant? [889]

A. Yes, sir.

Q. When a ship is regularly operated, that is, continuously operating, notwithstanding that it is found necessary to have azimuths taken every day or so, isn't it?

A. Yes.

Q. To check on the heading the ship happens to be on?

A. Yes.

Q. That is, on her regular course?

A. Yes, sir.

Q. And that gives you the deviation of that heading of the ship, isn't that right?

A. Yes, sir.

Q. Now, suppose you have a ship that is not continuously or regularly operating like that, if you have one that is thrown into a bone-yard, like this ship, the "Denali", for instance, lays there for months and months at a time, then take that ship out, you are going to find that something has happened to the deviations of the compass; that is common knowledge, isn't it?

A. Sometimes, sir, yes.

Q. And it is due to the fact that she has been lying so long on one heading, and nobody has been

(Testimony of Francis Kelly.)

checking her all the time, and no effort made to correct her, isn't that correct?

A. Sometimes it would affect that, sir.

Q. Ordinarily it tends to affect them in every case.

A. It has a tendency, yes.

Q. That is common knowledge among mariners, isn't it?

A. Yes, sir.

Q. All shipowners know that, all maintenance superintendents everybody, isn't that so? [890]

A. As a rule they do, yes.

Mr. Bogle: I object to that as not proper, Your Honor. I do not think that is proper cross examination.

The Court: I think it is repetition of what was said in the preceding question, and it will stand, but unless you have a different thought to convey in a question you may proceed on some other line of inquiry.

Q. So that when a ship is taken out of the bone-yard or laid-up fleet like that, it is an important matter to have something done to the compasses, to ascertain whether they are in good condition, considering those disturbing influences to which the compasses have been subjected during that lay-up period, isn't that correct?

Mr. Bogle: I object to that, if Your Honor please. I do not think it is based upon any testimony in the record. He refers to disturbing influences, etc.



(Testimony of Francis Kelly.)

The Court: The objection is overruled. He may answer the question, if he knows.

The Witness: Sometimes, sir, it would affect the compass. Other times I have found it did not.

The Court: You may have the question repeated, if you wish, Mr. Ryan.

Mr. Ryan: Yes; I would like to have a more accurate answer.

The Court: Keep in mind the specific form of the question, Captain. Read it to him. (Question read.)

The Witness: Yes; I would say it is correct.

Q. On your direct examination you mentioned something about observations to be taken by the master or officers. Just when are those observations made, if they are made, [891] so far as you know, according to the usual practice?

A. The usual practice is to take the azimuths—the best time of the day is morning or evening.

Q. That is right, they take them during the course of the voyage at certain times of the day when they can take an azimuth of the sun, or something of that sort?

A. Yes.

Q. That is the usual and regular practice?

A. That is the usual and regular practice at sea.

Q. They do not take it at any other time, do they, as a matter of usual and regular practice?

A. Oh, yes, sir; they take it at every available chance they get. Every chance they get they take

(Testimony of Francis Kelly.)

it, but the best time to take them is morning and evening.

Q. How long since you have been in the Alaska trade on steamers?

A. 18 years.

Q. 18 years since you have been to sea?

A. Yes, sir.

Q. You said something about the master should do something about the compass, should make some observations. When does he make those observations?

A. The master, you say?

Q. Yes. The ship is going out on a voyage, or getting out of port here in Seattle to go to Alaska, and you said—

A. (Interposing) As a rule they make observations in the harbor here before they proceed to sea.

Q. After the cargo is loaded?

A. Yes, sir.

Q. That would be entered into the log book, wouldn't it? [892]

A. As a rule, sir, yes; it is always entered in the log book, whatever they do.

Q. If they do it?

A. Yes, sir; if they do it.

Q. There is no common practice for the master to do that before the cargo is loaded, is there?

A. No, sir, because he has to wait until the cargo is aboard, because he might be loading steel or iron, or something like that.

(Testimony of Francis Kelly.)

Q. And there is no practice for them to do it before the cargo is loaded, whether the vessel comes from a laid-up fleet or not, so far as the port of Seattle is concerned?

A. No, sir.

Q. Do you know the practice of the Northland Transportation Company?

A. No, sir.

Q. You do not know it?

A. No, sir.

Q. Do you know the practice of the Canadian Pacific Steamship Company?

A. No, sir.

Q. Do you know the practice of any other steamship company than the Alaska Steamship Company with reference to how often they have their compasses adjusted?

A. Are you talking about steamship companies on the East Coast?

Q. I am not talking about steamship companies on the East Coast. I am talking about the practice here on Puget Sound with reference to the adjustment of compasses. Isn't it a fact that the usual practice here is to have the compasses [893] adjusted every Spring just before the ship goes out on the regular cruises for the summer?

A. No, sir; it is not the practice.

Q. All right. Is it the practice for the Northland Transportation Company or not?

A. I couldn't say.

(Testimony of Francis Kelly.)

Q. Then you don't know what the practice is, do you?

A. Not of that company, sir.

Q. What other company than the Alaska Steamship Company permits a ship to go out in the Spring from a laid-up fleet without having her compasses adjusted, if you know?

A. I don't know, sir.

Q. You don't know of any company that does, do you?

A. No.

Q. You do not even know of a fishing boat that goes out in the Spring without having her compasses adjusted, do you, from Puget Sound?

A. I couldn't say.

Q. Up in those Northern waters?

A. I couldn't answer that. I have never been aboard those fishing boats.

Q. Then you don't know what the practice is with reference to how often they have the compasses adjusted, do you?

A. In my experience at sea, sir, they do not have it very often.

Q. 18 years ago, is that right?

A. 18 years ago.

Q. You do not know what the practice is since 18 years ago, do you?

A. No, sir. I wasn't at sea. [894]

Q. And then you were at sea for the Alaska Steamship Company, the Petitioner here?

(Testimony of Francis Kelly.)

A. Previous to those 18 years, yes.

Q. And it is the practice of that company that you are testifying to, isn't that right?

A. Yes, sir.

Q. Now, it would be a good thing to have the compasses looked at and examined by a compass adjuster before the ship goes out, isn't that so?

Mr. Bogle: I object to that, if Your Honor please, as argumentative.

The Court: Objection sustained. At this point we will take a ten-minute recess.

(Recess) [895]

The Court: Captain Kelly, will you resume the stand?

Captain Kelly: Yes.

The Court: Try to expedite your cross examination, Mr. Ryan.

Mr. Ryan: Yes, I will try to.

FRANCIS KELLY,

resumed the stand.

Q. (By Mr. Ryan) As a matter of fact you were out on the "Denali" only two days during your total inspection of her?

A. Three days.

Q. Are you sure about that?

A. Yes, sir.

Q. Do you have——

A. (Interposing) The 29th, 30th and 31st.

Q. Did you make any record of your being out there on the 29th?

(Testimony of Francis Kelly.)

A. Yes, sir.

Q. That is——

A. (Interposing) That is the day that we put a test on the boiler, the first day.

Q. Now, you have testified that deviation cards are essential on a ship?

A. Yes, sir.

Q. It is also essential, is it not, that the deviation cards be correct?

A. As near as possible, sir. [896]

Q. As near as the compass adjuster can make them, is that correct?

A. Yes, sir.

Mr. Ryan: I move to strike out all of this testimony with reference to the practice of steamboat companies in the Alaskan trade or the practice of the steamship companies at Seattle, on the ground that it has now developed on cross examination that the witness has not been in that trade for eighteen years—for the last eighteen years—and is only testifying as to a practice as of eighteen years ago, and then only as to this company.

The Court: In response to that the Court will say that the witness' testimony on cross examination will be borne in mind by the Court, along with the Court's consideration of his testimony on direct examination, and the matter goes more to the weight than anything else. For those reasons the motion will be denied.

Q. (By Mr. Ryan) Isn't it a fact that in your examination of the various parts of the hull struc-



(Testimony of Francis Kelly.)

ture of the "Denali", you reported that they were good, isn't that right?

A. Yes, sir.

Q. But when it came to the compasses, you said, "Reported good"?

A. Yes, sir.

Q. That is the only entry you made?

A. That is right.

Q. And that is the only item on the ship on which you used the expression "Reported good", isn't that right?

A. I think so, as near as I remember now. [897]

Q. In other words, you put compasses in an entirely different class from everything else on the ship so far as your records were concerned?

A. I found the compasses in good condition, otherwise I would have reported them if they were not.

Q. I say——

A. (Interposing) Yes, sir.

Q. (Continuing) ——that your records show——

A. (Interposing) Yes, sir.

Q. (Continuing) ——your records that you made at the time——your contemporaneous records put the compasses in an entirely different category from every other item on the ship, in that you didn't say simply that they were good, but you said, "Reported good"; isn't that so?

A. Yes, sir.

Q. Now, when a ship is swung—you know what swinging a ship means, don't you, Captain?

(Testimony of Francis Kelly.)

A. Yes, sir.

Q. When a ship is swung you make a record of that in the log book under usual practice, do you not?

A. Yes, sir, that is the usual practice.

Q. So if there is no record in the log book there is no swinging of the ship, isn't that so?

Mr. Long: That is argumentative, and that is objected to. That is for the Court to say. It may be in the azimuth book, or it may be put in another book.

The Court: Well, he may answer the question if he knows.

A. As a rule it is entered in either the log book or the compass error book. [898]

Q. (By Mr. Ryan) I see. When have you ever seen the swinging of the ship—you have often seen swinging of ship entered in log books of the ships, haven't you?

A. Yes, sir.

Q. That is a usual and ordinary entry?

A. Yes, sir.

Q. And under your usual practice it is always made in the log book when they swing the ship, isn't that so?

A. No, sir, not at all times.

Q. All right. Now, what does "swing of ship" consist of?

A. Getting it on the different headings to ascertain the deviation.

Q. How long does it take?

(Testimony of Francis Kelly.)

A. That depends, sir. Sometimes it takes half a day.

Q. All right. What is the requirement with respect to making entries in the log book of the ship?

A. Everything pertaining to the ship is supposed to be entered in the log book.

Q. Why certainly it is, and the swinging of a ship is supposed to be entered in the usual manner in the log book, isn't that right?

A. No, sir.

Mr. Bogle: I object to that as being argumentative.

The Court: Objection overruled. He may answer that if he knows.

A. Not at all times is it put in the log book.

Q. (By Mr. Ryan) Can you tell me any instance that you can remember in your entire experience where a ship has been swung and the fact that it has been swung has not been entered in a vessel's log book? [899]

A. I don't remember, sir. I cannot remember that offhanded to tell you that.

Q. I see.

A. It is either one book or the other that it is entered in. Some ships—different ships enter it in different fashions.

Q. All right. Can you give me the name of any ship that you ever saw where it was entered that way—where the ship was swung and it was not

(Testimony of Francis Kelly.)

entered in the log book—the name of any ship and about the time that was?

A. No, sir, I cannot give you that now. I cannot go back all them years and tell you those things right offhanded. It is impossible for me to remember all that.

Q. You do not mean to say, Captain, that it is the practice for a ship here in Seattle Harbor, after a cargo is loaded, to go out and swing the ship every time that it goes to Alaska?

A. He will go out and get the principal points if he possibly can before going to Alaska.

Q. That is not an answer to my question. You know what to swing a ship is, don't you?

A. Yes, sir.

Q. I am asking you, is it not a fact that it is not the practice in Seattle, or anywhere on Puget Sound, for ships which have loaded cargo here to go out and swing the ship every time before they go up to Alaska?

A. Not every time, no, sir.

Q. Why don't they do it every time?

A. Different cargoes is the cause of it. If I have a lot of steel aboard I am going to do it. I don't know what [900] another ship master might do, but I will do it.

Q. You would do it in case you had steel aboard?

A. Principally, sir,—steel rails or such like—a heavy cargo of steel.

Q. If you had steel rails on board you would do it?

(Testimony of Francis Kelly.)

A. Yes, sir.

Q. And if you didn't you would not do it?

A. Not with grain, or coal, or anything like that, no.

Q. You would rely on the deviation cards that are posted right up there staring you in the face by the compass, would you?

A. And the bearings that I would take on my compasses daily.

Q. That is, the ordinary azimuths that you would take each day on the course that the vessel happened to be steering?

A. Yes, sir.

Q. You would rely on the deviation cards that were posted up there by a competent compass adjuster, is that not so?

A. Yes, sir, I would have to, unless I found out otherwise.

Q. Now, this practice that you spoke about, about masters taking bearings, just on what headings do they take bearings, according to your practice, or do you know—as a matter of practice here in Seattle?

The Court: You have ten more minutes in which to complete your cross examination.

Mr. Ryan: I will be finished before then.

The Court: Very well. Proceed.

A. You take it on at least eight points of the compass.

Q. (By Mr. Ryan) In other words, do you think that they would swing the ship every time after they loaded an iron cargo? [901]

(Testimony of Francis Kelly.)

A. It would be advisable to do that, yes.

Q. But it is not a matter of usual practice, isn't that so?

A. Well, I have found it so, sir. I don't know about the others.

Q. Now, if you really want to find out what is wrong with the compass, if there is anything that has happened that would tend to affect its deviations and change them, good practice would require that a compass adjuster do that, isn't that so?

A. Not at all times; no, sir. Not at all times.

Q. Under the circumstances that I have given you?

A. What is the question?

(Question read)

Mr. Long: Well, you haven't given him the circumstance.

A. The master can do it.

Q. (By Mr. Ryan) Well, I am telling you if something has happened to the ship——

A. (Interposing) Yes, sir.

Q. (Continuing) ——such as would indicate to any reasonable prudent master that that thing has caused a change in the deviations of that ship's compass——

A. (Interposing) Yes.

Q. (Continuing) ——has made her a different kind of a magnet——

A. (Interposing) Yes, sir.

Q. (Continuing) ——under those circumstances good practice requires that a compass adjuster



(Testimony of Francis Kelly.)

examine the compass and correct it—adjust it, isn't that right?

A. If the master found those conditions, certainly he would ask for that. [902]

Q. Yes.

A. The master of the ship.

Q. If the master found, or if the ship owner found—

A. (Interposing) Yes, sir.

Q. (Continuing) —that the ship, say, had been subjected to some magnetic influences such as—over such a period of time that it was very likely that her deviations had changed on many heads, isn't that right—so that the deviation cards were different?

A. Well, that would be up to the master of the ship.

Q. Well, the master of the ship does not adjust compasses in the Alaskan trade, does he?

A. Well, he very nearly does.

Q. What?

A. He does a lot of it.

Q. Do you know what I mean when I say adjusting the compasses?

A. You mean to shift the magnets?

Q. Yes.

A. No, sir, I would not do that.

Q. And you have never known of that being done?

A. Yes, sir, I have.

Q. Have you ever known of any master in the Alaskan trade that has done that?

(Testimony of Francis Kelly.)

A. Yes, sir.

Q. On what ship—or what ship master ever changed the correctors on the compasses of his ship?

A. They are not here now.

Q. You cannot remember them, can you?

A. Yes, I can remember them. [903]

Q. He was a very unusual man, wasn't he?

A. He was a smart man.

Q. But the usual practice is for the ship masters to let the compass adjusters on shore, or for the ship owners to let the compass adjusters on shore do that, isn't that right?

A. Yes, sir.

Mr. Ryan: I reserve further cross examination of this witness until after the records that have been mentioned are produced.

The Court: Very well. When those records are produced you may cross examine further.

Mr. Ryan: Yes.

The Court: And you will be subject to call, Captain. You do not need to remain in the court room. You may go upon your business.

The Witness: Yes, sir.

The Court: But you will remain available subject to call in case it becomes necessary to inquire further concerning those records, that is, if they are produced.

The Witness: That is, on some other day?

The Court: Some other time. It might mean any other day.

(Testimony of Francis Kelly.)

The Witness: Yes, sir. Of course, I might be out of the city.

The Court: Then the Court and counsel will have to suffer.

Mr. Bogle: I will ask counsel for the claimants if they are not in a position to furnish us with copies of those inspectors' records? [904]

Mr. Summers: We have copies, but we do not have the originals.

Mr. Bogle: I then demand the copies, if we cannot get the originals.

Mr. Summers: We have no objection to disclosing those copies to you.

The Court: Very well. You may do so.

Mr. Ryan: May I ask Mr. Bogle and Mr. Long, haven't both of you examined those books time and time again down in the Steamship Inspection Office?

Mr. Long: I have just examined one book.

Mr. Bogle: You examined one book?

Mr. Long: I examined one book, yes.

Mr. Bogle: And I haven't examined any of them at all.

Mr. Long: But I did not have time to take copies of that.

Mr. Ryan: I produce the two copies that we have, in response to Petitioner's demand, and if counsel desires, they can be marked for identification.

The Court: They may be now marked for identification as Petitioner's—

Mr. Ryan (Interposing) With this proviso, that since they are our copies and since we are using

(Testimony of Francis Kelly.)

these in connection with the trial, I would like to have, as to these two exhibits, in view of the fact that they are our property, the right to use them during the trial, and not leave them in the clerk's office.

The Court: Then perhaps you will withdraw your request that they be marked for identification?

[905]

Mr. Bogle: It is perfectly agreeable with me that they be used during the trial by them and that they be identified.

The Court: Let them be produced at this time, then. The Court makes no order respecting their being marked, or identified, or taken into possession by the clerk. You may proceed.

Mr. Bogle: Is that a copy of your book, Captain?

The Witness: This is not my handwriting, sir.

Mr. Bogle: I understand that, but that is the hull book, isn't it?

The Witness: Yes, sir.

Mr. Bogle: Can you let me have it a minute, Captain?

(The witness hands book to Mr. Bogle)

Mr. Bogle: I would like to have it marked for identification, and I have no objection to counsel withdrawing it at any time.

The Court: That will be Petitioner's Exhibit 17 for identification.

(Document marked for identification Petitioner's Exhibit No. 17.)

(Testimony of Francis Kelly.)

Mr. Ryan: It being stipulated that I shall have the right to have them in my possession until the conclusion of the trial.

Mr. Bogle: I would like to have some time for the purpose of examining that exhibit myself—that exhibit and the other book.

Mr. Ryan: You can examine them at any time you wish. [906]

Mr. Bogle: Yes, and I have no objection to having them withdrawn, but I would like to have some opportunity of examination.

The Court: Upon the occasion of being advised by counsel on either side feeling it desirable for their own convenience to request the Court for leave at that particular time to take this identified exhibit into his own possession temporarily, the Court will consider that request when made.

Mr. Ryan: If the Court please, that does not quite comply with my condition. I do not want to lose possession of these documents, because I will have to use them in connection with my witnesses during this trial. If I am going to lose the right to have them—I will make them available at any time that Mr. Bogle or Mr. Long want to come and see them in Mr. Summer's office at any time of the day or night.

The Court: I think the best place to have them is in the clerk's possession, and then each and all parties of interest will have access to them in the clerk's office, and then there will be no question

(Testimony of Francis Kelly.)

about them. If there arises a situation, Mr. Ryan, where it will inconvenience you if you do not have these to take them with you some night, if you will make that occasion and situation known to the Court, the Court will then and there consider it afresh, but at this time they should be left in the custody of the clerk, as all other identified and admitted exhibits.

Mr. Ryan: I do not like to press it, Your Honor, but it is rather important. Almost every day we have [907] new witnesses coming in here——

The Court: (Interposing) The same can be said of any identified exhibit.

Mr. Ryan: It has not been identified yet. I am just objecting to the thing leaving our possession, that is all, because it is our copy of the document. I am willing to have it available at any time. But Mr. Bogle would not grant me the courtesy yesterday, and therefore I had to stay here last night until almost eight o'clock looking at the exhibits in the clerk's office, and inconveniencing the clerk. I do not like to do that again.

The Court: Well, that happens in the course of almost every trial. While that does not happen to be done in other offices, this clerk's office does that.

Mr. Ryan: Well, rather than have any argument I won't say anything more. This one also may be marked.

(Document marked for identification Petitioner's Exhibit No. 18.)



(Testimony of Francis Kelly.)

The Court: And any time in the case of an identified exhibit—one not admitted—if both counsel consent that the exhibit may be withdrawn, or if the Court orders upon a proper showing that it be withdrawn, the Court always will entertain that sort of a request when the matter is presented. [908]

### Redirect Examination

By Mr. Bogle:

Q. Captain, I hand you a book which has been identified as Petitioner's Exhibit 17, and I will ask you to examine that and see if you can identify that as a copy of the record that you made of your inspection of the Steamship "Denali" in 1935?

A. I don't know that it is, sir.

Q. Captain, have you your original book with you?

A. No, sir. I am not allowed to bring that.

Mr. Bogle: Possibly we might stipulate, Your Honor, that the witness should take this identification, Petitioner's 17, and compare it with his own record, and then return to testify as to whether it is an exact copy.

The Court: Will that accommodate both sides in the case?

Mr. Ryan: Yes, Your Honor.

The Court: That may be done if that is desired, in view of the attitude of both counsel.

Mr. Bogle: I think that will be advisable, Captain.

(Testimony of Francis Kelly.)

The Court: As to Petitioner's Exhibit 17 for identification.

Mr. Bogle: Yes.

The Court: Does that also apply to 18?

Mr. Bogle: I was going to ask that it apply to 18, too, and that we allow Mr. Robinson to take this and check it with his original notes. Is that satisfactory?

Mr. Ryan: Yes. [909]

The Court: Very well. 18 may be delivered to Mr. Robinson, on consent of counsel, for the purpose of comparing it with the original and returning it into court in the morning at 10:00 o'clock, and the same order with reference to No. 17, with the exception that it may be delivered to Captain Kelly for the same purpose, to be returned at 10:00 o'clock tomorrow.

Q. (By Mr. Bogle) Captain, just a couple of questions. Is it any part of your duty, as United States Inspector, to swing a ship and determine her deviations?

A. I don't get you.

Q. I say, is it any part of your duty, as a United States local inspector, to swing the ship that you are inspecting to determine her actual deviations?

A. No, sir.

Q. You never move her from the place that she is moored, do you?

A. No, sir.

...

(Testimony of Francis Kelly.)

Q. Now, Captain, after a ship has been swung by a professional compass adjuster, and a magnetic cargo, such as steel, is loaded aboard that ship, how can you determine what effect that magnetic cargo has upon the vessel's compasses?

A. By taking bearings, sir—azimuths.

Q. And is that ordinarily done by the master?

Mr. Ryan: That is objected to on the ground that it is leading and, further, it is not proper redirect.

Mr. Bogle: All right. I am perfectly willing to withdraw it.

Q. (By Mr. Bogle) By taking azimuths after the cargo is [910] loaded does that give you—if correctly taken, does that give you your true deviations on the compass?

A. Magnetic deviations, sir.

Q. Magnetic deviations?

The Court: Just speak a little louder, Captain. What is your answer?

The Witness: Yes, sir, magnetic deviations.

Mr. Bogle: That is all, Captain.

The Court: Any further cross-examination?

Mr. Ryan: Yes.

#### Recross Examination

By Mr. Ryan:

Q. That only gives you the true deviations on the compass so far as the particular headings are concerned on which the ship is heading isn't that right?

(Testimony of Francis Kelly.)

A. Yes, sir.

Q. May I see that little book, Captain?

A. Yes.

Q. I show you page 6 of this book that you have referred to, Petitioner's Exhibit 17, and call your attention to the entry date or dates of actual work of inspection, January 30, 1935, and January 31, 1935.

A. It should be January 29.

Q. Isn't that so?

A. It should be January 29-30, 1935, as far as I recall.

Q. But it is not that way here, is it?

Mr. Bogle: I would suggest, Your Honor, that the proper time of cross-examination in regard to that is [911] after the book has been checked to see if it is a true copy.

Q. (By Mr. Ryan) Well, so far as this copy is concerned there is no entry of January 29th there, is there, Captain?

The Court: Well, counsel does not seem to be willing to wait until this copy has been compared with the original, and the Court will not interfere with his examination.

Mr. Bogle: I thought that we would wait until we could get the correct record.

Mr. Ryan: All right. I will wait until we get the correct record. I thought that we could finish up this little subject without opening it up later again, but I will wait.

Mr. Bogle: Is that all?

(Testimony of Francis Kelly.)

The Court: Is that all?

Mr. Ryan: That is all, excepting that I reserve the right to cross-examine after we have compared it with the original book.

The Court: Yes.

Mr. Bogle: That is all.

(Witness excused)

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The Court: Will each of you gentlemen see that the books are returned to the court in the morning at 10:00 o'clock?

Mr. Ryan: Yes.

Mr. Bogle: Yes. I will call Captain Morgan.  
[912]

GEORGE W. MORGAN,

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name?

Mr. Ryan: There is a witness on the stand, isn't there? This man was merely taken off to accommodate the witnesses from the Steamboat Service. Is this man from the Steamboat Inspection Service?

Mr. Bogle: Yes. There are four of them, Mr. Ryan.

Mr. Ryan: Pardon me.

(Testimony of George W. Morgan.)

Q. (By Mr. Bogle) Will you state your name?

A. George W. Morgan.

The Court: George W. Morgan?

The Witness: Yes, sir.

Q. (By Mr. Bogle) Captain, are you employed by the United States Steamboat Inspection Service?

A. Yes, sir.

Q. In what capacity?

A. Assistant Inspector of Hulls.

Q. At what port?

A. Seattle.

Q. How long have you been employed in that capacity?

A. Fourteen years.

Q. And what was your experience prior to your connection with this service?

A. Going to sea as a boy, up to a master.

Q. What papers do you hold? [913]

A. Master of any ocean.

Q. How long have you held a master's license?

A. 22 years.

Q. Have you had any active experience as a master in Alaska?

A. Yes, sir.

Q. Approximately how many years?

A. Well, about two years in Alaska.

Q. About two years in Alaska?

A. Yes, sir.

Q. Captain, did you in your capacity as assistant local inspector of hulls make any inspection of the Steamship "Denali" on or about April 5, 1935?



(Testimony of George W. Morgan.)

A. I made a drydock inspection of her.

Q. Where was the vessel at the time that you made the examination?

A. Todd's Dry Dock, Seattle.

Q. Can you tell the date of that examination?

A. The 4th, I believe it was.

Q. April 4th?

A. Yes.

The Court: April 4th?

The Witness: I believe it was.

Mr. Bogle: Yes, April 4th.

Q. (By Mr. Bogle) I will hand you what has been marked Petitioner's Exhibit 8, the attachment—the attached paper there.

A. That does not show anything that pertains to the dry dock.

Q. What does this one show? (Indicating)

A. This is the annual inspection. Oh, here is the tail [914] shaft, yes. That will show.

The Court: Speak a little bit more distinctly and clearly. Keep your voice raised, as otherwise we have difficulty in hearing you.

Q. (By Mr. Bogle) Does the paper upon which the mark is made, "Petitioner's Ex 1", pertain to the drydock inspection?

A. I cannot answer that. I had nothing to do with that.

Q. What did you have to do with inspecting the vessel?

A. While she was in the dry dock examining the under water body.

(Testimony of George W. Morgan.)

Q. What dry dock did you say that she was in?

A. Todd's Dry Dock.

Q. In the Port of Seattle?

A. In the Port of Seattle.

Q. She was in the dock dry?

A. Yes, sir.

Q. And your examination was limited to the under hull portion?

A. Yes, sir.

Q. In what condition did you find the under hull portion of this ship?

A. I found her seaworthy.

Q. Now, Captain, did you keep any original notes of that inspection of April 4th?

A. I have a book in the files of that dry dock examination, yes.

Q. Is that subject to the same rule——

A. (Interposing) Yes.

Q. (Continuing) ——as in the case of Mr. Robinson's notes? [915]

A. Yes, sir.

Mr. Bogle: I will ask counsel if they have the book of the dry dock inspection of April 4th?

Mr. Ryan: Yes, we have our copy.

Mr. Bogle: That seems to be the only available copy. May we have that marked?

Mr. Ryan: Well, I would like to look it over for a few minutes first, if I may.

Mr. Bogle: All right.

The Court: You may cross-examine.

(Testimony of George W. Morgan.)

Cross-Examination.

By Mr. Ryan:

Q. Did you recommend that any work be done as a result of your examination of the "Denali"?

A. No, sir.

Q. Was any work done while the ship was on dry dock?

A. That is some time ago. I cannot remember that. It is in the book, if there is any record of it.

Q. The tail shaft was drawn, wasn't it?

A. That is in the book.

Q. Well, I mean it was drawn, wasn't it?

A. I had nothing to do with the tail shaft.

Q. Did you make any record with reference to the tail shaft?

A. No. I don't make them records.

Q. Well, I show you a copy of what—what purports to be a copy of the report, and I will ask you—

The Court: (Interposing) Well, when is it dated, and how did you identify it? [916]

Q. (By Mr. Ryan) Well, can you identify that?

A. It is not my writing so—I would say that this here is the writing that I put in my book (indicating).

Q. That is what?

A. This is the writing that I put in my book—part of it. I didn't have anything to do with the tail shaft.

The Court: Well, is it—

(Testimony of George W. Morgan.)

Q. (Interposing) What part of it was in your writing, or can you tell that, or would you have to compare this with the notes on file to be able to tell that?

A. The hull part.

Q. The hull part?

A. Yes, sir.

Mr. Ryan: You may see it, Mr. Bogle.

Mr. Bogle: I will have this one marked.

The Court: It may be marked Petitioner's Exhibit 19 for identification, and will some counsel in the case ask the witness if that is the book that he has just held in his hand about which he was inquired of by Mr. Ryan?

(Document marked for identification Petitioner's Exhibit No. 19.)

### Redirect Examination

By Mr. Bogle:

Q. Is this the book, Captain, marked Petitioner's Exhibit 19, which you were holding in your hand when you were being examined by Mr. Ryan?

A. That is the book that I held, yes.

Q. As I understand it it is marked a copy?

A. Yes, sir. [917]

Q. It is not in your handwriting?

A. No, sir.

Q. A part of the original book was in your handwriting?

A. Yes, sir.

Q. And a part of it was in the handwriting of another inspector?

(Testimony of George W. Morgan.)

A. Of the boiler inspector, yes, sir.

Mr. Bogle: Might we have the same ruling with respect to this, to be checked with the original?

The Court: Is there any objection, Mr. Ryan?

Mr. Ryan: No objection.

Mr. Bogle: And brought here tomorrow morning?

Mr. Ryan: No objection.

The Court: Then the witness may take this book from the clerk and the Court makes him responsible for this exhibit identified as Exhibit No. 19, and he may compare it with the original record and then bring it back into court at 10:00 o'clock tomorrow morning.

Any further questions of this witness at this time?

Mr. Ryan: No. I am reserving the right to cross-examine him if we find it necessary after he has made that comparison.

The Court: That right is reserved. You may be excused from the stand, Mr. Morgan. Call your next witness.

(Witness excused) [918]

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JAMES BANNER,

called as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name, please?

A. James Banner.

(Testimony of James Banner.)

Q. Mr. Banner, are you employed in the Steamboat Bureau—the Navigation Steamboat Inspection Bureau of the Department of Commerce?

A. Yes, sir.

Q. In what capacity?

A. Assistant Inspector of Boilers.

Q. At what port?

A. Seattle.

Q. How long have you been so employed?

A. Six and a half years.

Q. What was your experience prior to that time?

A. Well, I have about twenty-three years experience as chief engineer—approximately that, anyhow—twenty years, we will say, as chief engineer.

Q. Of steamers?

A. Yes, sir.

Q. Of steam vessels?

A. Yes, sir.

Q. Mr. Banner, did you in your official capacity make any inspection of the Steamship “Denali” while in dry dock on April 4, 1935?

A. Yes, sir.

Q. Where was the vessel in dry dock at the time? [919]

A. Todd’s Dry Dock.

Q. It was in dock and her hull was dry?

A. Yes, sir.

Q. And what did your inspection consist of?

A. I inspected the tail shaft and the sea connections.



(Testimony of James Banner.)

Q. What was done with the tail shaft?

A. The tail shaft—the propeller was removed, and the tail shaft drawn in and inspected.

Q. What did you find with reference to the tail shaft?

A. I found the tail shaft in good condition.

Q. Was that a regular, periodical inspection required by your regulations?

A. Yes, sir. Three years.

Q. The three year inspection of the tail shaft?

A. The three year inspection of the tail shaft, yes, sir.

Q. And you found no defect in the tail shaft?

A. No, sir.

Q. And this book which has been marked Petitioner's Exhibit for identification No. 19 contains in part a copy—what purports to be a copy of your notes of that inspection?

A. Yes, sir.

Mr. Bogle: Might I suggest that this witness, together with Captain Morgan jointly examine it—examine this exhibit to see if it is a copy of their original?

The Witness: This is not my handwriting (indicating).

Mr. Bogle: No, it is not. I understand that.

The Court: But does it purport to contain a record [920] with reference to your inspection of the tail shaft?

The Witness: Yes, sir.

(Testimony of James Banner.)

The Court: Will you kindly, between now and tomorrow morning, Mr. Banner, take the original record that you made——

The Witness: (Interposing) Yes.

The Court: (Continuing) ——relating to your inspection of this tail shaft and compare that with that original record and see whether or not this is a copy of it.

The Witness: Yes, sir.

The Court: The book, however, is left in the care of the previous witness.

Q. (By Mr. Bogle) Mr. Banner, what other inspection, if any, did you make of the "Denali" while she was in dry dock excepting to attend the drawing and the examination of her tail shaft?

A. Well, the propeller was examined; the out-board stern bearing; the tail shafting and the fastenings on the sea connections.

Q. Those are the under water sea connections?

A. Those are the underwater sea connections, yes, sir.

Q. Which can only be inspected in dry dock?

A. Yes, sir.

Q. And what did you find with reference to the various parts of the ship that you examined?

A. I found everything in good condition.

Q. And this attached certificate was issued subsequent to your examination—this attachment to the regular certificate of inspection? [921]

A. Yes, sir. That is the practice. That is an amendment.

(Testimony of James Banner.)

Q. Do you know, Mr. Banner, how long the vessel was in dry dock for this inspection and the drawing of the tail shaft?

A. No, but I have an idea; approximately the time that I was down there on the job.

Mr. Bogle: I think that is all.

Mr. Ryan: No questions.

The Court: You may be excused.

Mr. Bogle: I would like to ask him one further question.

Q. (By Mr. Bogle) In connection with your work with the Department, to what extent have you come in contact with Mr. E. M. Murphy, employed by the Alaska Steamship Company in 1935 as superintendent of maintenance and repair?

A. Well, at different times when I have been on the work I have had considerable dealings with Mr. Murphy.

Q. Well, have your dealings been—your dealings in connection with your official duties, I mean—have you had any dealings with him—any considerable dealings with him in connection with your official capacity as local inspector?

A. Yes, sir.

Q. Has that contact been sufficient to give you an idea as to his competency and fitness for the job of superintendent of maintenance and repair?

A. Well, I think so.

Q. Well, what would you say as to his fitness for that job?

(Testimony of James Banner.)

A. Well, I think that Mr. Murphy is a very efficient man and [922] a very attentive man.

Q. You have always found him so in connection with your vessels?

A. Yes, sir.

Q. And you inspected, I take it, a large portion of their fleet each year, didn't you?

A. Well, some years I have inspected more than others. I cannot say. I have inspected a lot of their vessels at different times.

Mr. Bogle: That is all. [923]

#### Cross-Examination

By Mr. Ryan:

Q. You have never had anything to do with the navigational equipment, or aids or compasses on the "Denali", or any other steamer, have you?

A. No, sir.

Q. You have no idea of what Mr. Murphy's qualifications are with respect to compasses or navigational equipment, have you?

A. No, sir.

Q. All you refer to is his competency with reference to such matters, for instance, as you deal with?

A. Mechanical matters.

Q. The engineer department of the ship?

A. Yes, sir.

Mr. Ryan: That is all.

The Court: You may be excused from the stand. Call the next witness.

(Witness excused.)

(Testimony of William McDonald.)

Mr. Bogle: That concludes the inspectors, if Your Honor please.

The Court: Then you may resume with the previous witness.

WILLIAM McDONALD,

recalled as a witness on behalf of the Petitioner, testified as follows:

Further Direct Examination

By Mr. Long:

Q. This morning, Captain, I believe I was questioning you concerning the effect on compass deviation by the loading [924] of cargo. What effect does the loading of cargo, including iron or metallic cargo, have upon compass deviations of a vessel?

A. Well, there is some, according to the cargo you load in her.

Q. Can you predict beforehand, before the cargo is loaded into the ship, even though you may know what cargo it is, as to what deviations will occur as the result of loading that cargo?

A. No, sir.

Q. What is the only way in which the deviations can be obtained resulting from the loading of that cargo?

A. By observation on the sun, and if you cannot get the sun, by certain landmarks; lay the course on the chart and check it up on the landmarks.

Q. What charts did you have aboard the "Denali" during the last voyage that you made in 1934,

(Testimony of William McDonald.)

or the last voyage of the ship ending in October, 1934?

A. I had a full set of charts from Southeastern Alaska, Southwestern Alaska, all the Canadian charts, and down to Olympia.

Q. Were those charts on board the vessel when you left her at West Seattle in October, 1934?

A. Yes, sir.

Q. While you were master of the vessel, Captain, did you keep them up to date? Just what did you do about that?

Mr. Ryan: Do not lead the witness.

Mr. Long: I am sorry. I will put it another way.

Q. What method, if any, did you employ to keep your charts up to date, if you did so?

A. By getting the pamphlets from the Coast and Geodetic [925] Survey, and every new chart that came out, every edition that came out with the changes in the charts. We would change our charts accordingly. We got the new charts with anything new that was in effect on them regarding lights, soundings, or whatever it might be.

Q. How do those pamphlets reach you? Are they commonly referred to as notices to mariners?

A. Yes, sir.

Q. How do they reach you as master of the ship, or as officer of a ship?

A. They reach us through the office.

Q. How?



(Testimony of William McDonald.)

A. We usually get them at the office and do not have to go to the Inspectors' office at all. We get them at the company office.

Mr. Ryan: If the Court please, I did not understand that answer.

The Court: Capt. McDonald, will you do your best to speak a little more distinctly, let each word stand out a little more. It is hard to understand you.

Mr. Long: You could probably hear him on the bridge, Your Honor.

Q. (By Mr. Long) You refer to the company office; where do you mean?

A. Pier 2.

Q. Pier 2, in Seattle?

A. Yes, sir. And at Ketchikan, whatever changes in navigation laws or lights, rocks, we get that in the office at Ketchikan on our arrival there.

Q. In Seattle, Captain, where at the office do you obtain [926] these notices to mariners, and the Government publications that you have mentioned?

A. There is a pigeon-hole for every ship in the company, and they are put in these pigeon-holes, and then we pick them up from the pigeon-holes.

Q. Who picks them up, what member of the ship's personnel?

A. Sometimes I pick them up, and sometimes one of the officers picks them up and takes them on board the ship, and if there are any new charts, showing rocks or any other things to the aid of navigation we cut that out of the book and paste it in another book, and instead of having to go through

(Testimony of William McDonald.)

all those books we have the records for the run we are on. We copy them in a log book of our own.

Q. Do you keep a book aboard the ship in which these notices and new aids to navigation, etc., are filed?

A. Yes, sir.

Q. Was such a book kept on the steamship "Denali" in 1934?

A. Yes.

Q. Were all of the new notices to mariners so posted that you received?

A. Yes.

Q. Did you receive the notices to mariners in the manner that you have outlined?

A. Yes, sir.

Q. How about the Canadian publications?

A. We got them in Seattle, too.

Q. By the same method?

A. The same method.

Q. Captain, at the close of your voyage, and when the vessel [927] was laid up, was there a deck department equipment and store book prepared for the steamer "Denali"?

A. Yes; I think so. I am not sure of that but we had one. I do not look after that part of it.

Q. That is what I am getting at. Is there one prepared at the end of every voyage?

A. Yes, sir.

Q. For all ships?

A. For all ships.

(Testimony of William McDonald.)

Q. Who attends to the preparation of that deck department equipment and store book?

A. The chief officer.

Q. Do you check that with the chief officer in any respect?

A. No, sir. It is sent in to the office.

Q. Captain, at the close of your voyage, or at the termination of your voyage, do you as master of the vessel turn in any report other than the commander's report which we have referred to here today, any written report?

A. No, sir. Those are the only reports I send in, except in case there might be something wrong, something out of the ordinary, or something on the vessel broke down, or defects.

Q. Then what do you do?

A. I report that to the office.

Q. To whom?

A. To the superintendent.

Q. And who is that?

A. Mr. Murphy, at that time.

Q. Did you report to him at that time anything about any condition of your compasses? [928]

A. No, sir.

Q. Your compasses were in good working order all during that voyage?

Mr. Ryan: That is again objected to as leading.

The Witness: Yes, sir.

Mr. Ryan: Now, Mr. Long, I strenuously object to this kind of examination.

The Court: Objection sustained. Proceed.

(Testimony of William McDonald.)

Q. (By Mr. Long) In what condition were your compasses during that last voyage to which we have referred, and when you laid the ship up, based upon your personal knowledge and use of them?

A. They were all right.

Q. Did you recommend any repairs to them?

A. No, sir.

Q. Or any adjustments?

A. No, sir.

The Court: Were any repairs needed?

The Witness: No, sir.

Mr. Long: That is all. You may examine.

### Cross-Examination

By Mr. Ryan:

Q. If there is any fog, Captain, that is entered in your log book, isn't it; if the vessel encounters any fog during the voyage that is entered in the log book?

A. Yes, sir.

Q. And then in the commander's report that commander reports the weather, and if there is fog he enters the fog, or if there is detention, isn't that right? [929]

A. Yes, sir.

Q. And if there is nothing in the log book about fog, and nothing in the commander's report about fog, then there wasn't any fog encountered, isn't that so?

A. No, sir. There was fog encountered.

Mr. Long: I want to offer that in evidence, counsel.

(Testimony of William McDonald.)

Q. I show you what purports to be a copy of a report signed by you, a commander's report on the voyage that you have described of the "Denali", Voyage No. 37, September 27th to October 24th, 1934, and ask you to show me anything in there about fog, either on the outbound or inbound voyage?

A. Whether it is in here or not, there was fog in Granville Channel. We were there two hours trying to get in Granville Channel, in the morning.

Q. You say you had fog for a total of two hours in Granville Channel on that voyage?

A. Yes.

Q. It is not entered in your log book, is it?

A. Yes, sir.

Q. Where is it?

A. This is no log book, sir.

Q. Where is it?

A. It is in the log book. There isn't one-third of what is in the log book here, or one per cent. There isn't room for it here.

Q. I will call your attention to other commanders' reports which do show fog, on other voyages.

The Court: Mr. Ryan, will you designate what you have just now called the attention of the witness to. [930]

Mr. Ryan: I have called the attention of the witness to Petitioner's Exhibit—

Mr. Long: (Interposing) Just a minute; I want to clear the record.

Mr. Ryan: It is Exhibit A-1.

(Testimony of William McDonald.)

Mr. Long: That is Claimants' Exhibit A-1 for Identification, and I want to offer that portion of it pertaining to the testimony of this witness, which is the commander's report, on the back of that page, entitled Voyage No. 37, Steamship "Denali", commander's report, dated September 27th to October 24th, 1934. I want to offer that as a Petitioner's exhibit, and I so now offer it.

The Court: I wonder if that could be handled in connection with any offer which the Claimants may desire to make of the remainder of that identified exhibit, Claimants' Exhibit A.

Mr. Ryan: Well, in view of the testimony of this witness, Your Honor, I am not going to offer something that apparently is not a correct copy of the log book. If he has other than this evidence I have no objection to it going in evidence.

The Court: Do you have any objection to it being torn off and segregated from the other part?

Mr. Ryan: No, Your Honor.

Mr. Long: I am offering it in evidence.

Mr. Ryan: Just a moment; I forgot—we have not yet seen the log books, they have not been produced yet, covering that voyage. This purports to be something taken from that log book, and I do not think the Petitioner is [931] in a position to offer in evidence something like that, secondary evidence, when they still have those log books in their possession and have not produced them, so I object on the ground that it is not the best evidence.



(Testimony of William McDonald.)

The Court: Mark the sheet Mr. Long just referred to as Petitioner's Exhibit for Identification No. 20, and the Clerk will delete therefrom the identifying marks previously put on that sheet, the marks previously put on there by the clerk, and transfer those remarks to the remainder of what was originally marked as Claimants' Exhibit A-1 for Identification.

(Page of commander's report marked for identification Petitioner's Exhibit No. 20.)

Mr. Long: I just want to suggest this to Your Honor, in response to what I take to be an objection by counsel. Mr. McKinstry, Your Honor will recall, testified that the log books of the steamship "Denali" for 1934 were lost with the vessel and are not in the possession of the Petitioner. That was in response to the demand that we produce them.

Mr. Ryan: Mr. McKinstry, of course, had no personal knowledge on that subject at all.

The Court: It might be some evidence of that fact. The Court is not determining yet whether or not it is sufficient.

Mr. Long: I realize that, but we were asked to produce them and thus far that is what we have shown.

Q. (By Mr. Ryan) That is, that there is nothing on this commander's report, signed by you, Petitioner's [932] Exhibit No. 20 for Identification, to indicate that a fog was encountered, either on the inbound or outbound voyage, isn't that so?

The Court: Are you intending to proceed now with your cross-examination?

(Testimony of William McDonald.)

Mr. Ryan: Yes, sir.

The Court: Do you have any further questions touching the admissibility of this offered document, which you wish to ask the witness?

Mr. Ryan: Yes. I am showing that it is not a correct copy of the log book, as he recalls the log book; and that the evidence so far is clearly insufficient to show by any witness who has personal knowledge that the log book containing the entries for that voyage has been lost. The witnesses who would know that, that is, the officers of the "Denali" on this voyage, have not yet been produced. They were not drowned in this disaster, and I think the record shows that some of them, at least, are still in the employ of the Petitioner, and they would have knowledge on the subject as to where that log book is.

Mr. Long: May it please Your Honor, we produced these documents pursuant to counsel's demand. This document stands on its own footing. It does not purport to be a copy of a log book or a copy of anything. It is an original document, a commander's report, and as such I offer it.

The Court: Who made it?

Mr. Long: This gentleman; he identifies his signature at the bottom of the page. [933]

The Court: He himself made it?

The Witness: No, sir. I examined it and signed it. The mate wrote it down.

Mr. Long: Did you examine the contents of it?

The Witness: Yes, sir.

(Testimony of William McDonald.)

The Court: Were the contents put in there under your direction by the mate?

The Witness: Yes, sir.

The Court: Did you know at the time you signed it that the facts therein stated were true?

The Witness: Yes, sir.

The Court: Did you know that without referring to any other book or record of the ship?

The Witness: Yes, sir.

The Court: You didn't have to rely on any log book, or anything like that?

The Witness: No, sir. I had it all in my mind.

The Court: You knew they were the facts?

The Witness: Yes.

The Court: Everything on there is truly set forth?

The Witness: Yes, sir. Here are the figures. I had to figure it up to find out that it was right, and I know it was right.

Mr. Long: Did you compute the figures yourself, Captain, after they were put on that page?

The Witness: Yes, sir.

Mr. Long: Did you find them to be correct?

The Witness: Correct.

Mr. Long: Does this purport to be a copy of your log book? [934]

The Witness: No, sir.

The Court: Is any fact stated in there dependent for its truth and correctness upon any other record of the ship? In other words, is that in itself

(Testimony of William McDonald.)

complete of itself, without having to refer to some other record?

The Witness: It is correct as far as the running time of the ship is concerned, and her average speed, and time between ports. That is all it gives.

The Court: Look at the document, Captain, and see if there is contained in that exhibit, which is Petitioner's Exhibit No. 20 for Identification, a statement of any fact, or any figure or information, which would be dependent for its truth and correctness upon some other record not contained in that one?

Mr. Long: Do you understand the question, Captain?

The Witness: I did not get that very clear, sir.  
(Question by the court read.)

The Witness: Shall I answer now?

The Court: You may answer.

The Witness: All that is in this record is true; it is taken from day to day out of the log book and marked down here in the "Remarks", because this wouldn't hold one day's remarks. That is copied in here. We have to cut down on our reports, except for a few things, condition of the weather, and things like that, and put it down here, because this wouldn't hold 24 hours, sometimes, of our records.

The Court: Did the mate ask you the information from your own mind, or did he go to the log book and get the information? [935]

The Witness: No, sir; he picked it out of the log book itself, and then I looked it over and would

(Testimony of William McDonald.)

tell him if it is all right or all wrong, and I told him it was all right. The thing we are interested in here, as far as these things are concerned, is our time between ports, and in case of an accident we mark that down, or the ship grounding. That is mostly what we use that for.

The Court: On that testimony, gentlemen, it is the opinion of the Court that if the other record from which some of the information here is copied is in existence, that the Claimants' objection to its admission at this time should be sustained.

Mr. Long: Of course counsel asked for it, and we have produced it, and if he doesn't want it in the record, very well, but I can tell the Court at this time that the log book is not in existence, and that will be proved.

The Court: Will counsel for the Claimants accept that as a fact already proved?

Mr. Ryan: Not as a fact proved. I want to expedite this, and I am willing to accept counsel's statement here provided it appears later in some form or other, at some time during the trial.

The Court: The provision kills the effect of the agreement. Proceed. The objection at this time is sustained. You may supplement the proof as to the admissibility of this document later.

Mr. Long: I will withdraw the offer. Your Honor.

The Court: The offer at that time is withdrawn. [936] I think that will be sufficient for today. The Court is adjourned until tomorrow

(Testimony of William McDonald.)

morning, and proceedings continued until that time at ten o'clock.

(Whereupon an adjournment was taken until 10:00 o'clock a.m., October 22, 1937.) [937]

October 22, 1937,

10:00 O'Clock A. M.

The Court: You may proceed in the case on trial.

Mr. Bogle: The Inspectors have returned, Your Honor, and I suppose it would be in order to put them on the stand to verify these books.

The Court: The Court would like to do that unless there is objection.

Mr. Ryan: No objection.

The Court: You may recall them.

Mr. Bogle: We will recall Mr. Robinson.

The Court: Mr. Robinson is recalled. He is already under oath.

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RICHARD G. ROBINSON,

recalled as a witness on behalf of Petitioners, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Mr. Robinson, have you since the court proceedings yesterday received any wire from the Secretary of Commerce relative to the production of these books?

A. Yes. Our office received a wire last evening.

Q. Will you read that, please?



(Testimony of Richard G. Robinson.)

A. "Retel if assistant inspectors your office served by subpoena to appear in U. S. District Court Western District Washington Two P. M. today together with annual inspection books and records steamer Denali for January Nineteen Thirty Five Comply with subpoena."

Q. In accordance with that wire have you the original book [938] with you now?

A. Yes, sir. I have the hull book, the boiler book and the drydock book, the originals.

Q. Are those books the only office record you have of this inspection?

A. Yes, sir; these are the only ones we have. These are the files.

Q. I take it that your office would desire to retain or have returned to you the original books?

A. Yes, sir.

Q. Have you compared the book covering the boiler inspection of January 29, 30 and 31, 1935, with the copy which was produced yesterday covering the same dates?

A. Yes, sir.

Q. What have you to say as to whether the copy is a true and correct copy of the original book?

A. There are a few minor omissions in there, the lines not filled in, but the wording is exactly the same as to all the other details that were copied.

Q. You mean that some of the lines are not filled in in the copy?

A. Some have not been filled in as written in the original.

(Testimony of Richard G. Robinson.)

Mr. Bogle: I would suggest, Your Honor, in order to permit the Department to retain its original records that we devise some method of introducing the originals and then getting a correct copy into the record, so that the originals may be returned to the Department. I would be perfectly willing to have the reporter make a copy from the originals of the books to be furnished, on duplicate books to be furnished by the Department, and [939] upon the filing of the copies that the originals be returned.

The Court: In view of the fact, Mr. Bogle, that it is the copies that have been marked for identification, why do you not have completed the copies so marked and identified before further action on the matter of these particular records is taken. It may be that all you would need to do would be to proceed with the identified copies further as you may be advised, without cluttering up the record by marking for identification the originals which he wishes returned to the office in any event.

Mr. Bogle: That is perfectly agreeable. I understand that the Claimants were rather opposed to having their copies go into the record.

Mr. Ryan: Oh, no; we have no objection to it.

Mr. Bogle: Then that is all right.

The Court: I wonder if the witnesses who are familiar with these records could not complete these copies and make them full, true and correct before anything further is done.

(Testimony of Richard G. Robinson.)

The Witness: Yes; in five minutes I can fill in those omissions.

The Court: I think that would be practicable.

Mr. Bogle: That would be better.

The Court: You may be excused from the stand and do that.

The Witness: May I proceed with that?

The Court: Yes; you may do so.

Mr. Bogle: Let me have the hull book. I assume that this witness will complete his own record.

[940]

The Court: Yes, his own book, the boiler book, so-called.

(Witness excused)

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Mr. Bogle: I will recall Mr. Kelly.

The Court: Mr. Kelly is recalled. You have already been sworn, Capt. Kelly.

### FRANCIS KELLY,

recalled as a witness on behalf of Petitioner, testified as follows:

#### Direct Examination

By Mr. Bogle:

Q. Capt. Kelly, you have the copy which was referred to yesterday of the hull inspection of the steamship "Denali"?

A. Yes, sir.

(Testimony of Francis Kelly.)

Q. Have you compared that with your original book?

A. I have.

Q. What have you to say as to whether or not the copy is in all respects a full, true and complete copy of the original book?

A. It is a complete copy with one exception, sir, and that is on page 68 where it asks a question "Name of master assisting in this examination" and they put down directly there in that line "Lars Erickson", where I have it "Name of mate" and not the name of the master.

Mr. Bogle: That is on page 68?

The Witness: Yes, sir. Everything else is correct, sir.

Mr. Bogle: I would suggest, then, Your Honor, that [941] we have the copy corrected in that respect now.

The Court: Yes.

Mr. Bogle: That is the only difference.

Mr. Ryan: That is satisfactory.

Mr. Bogle: Will you make that correction now?

The Witness: Yes, sir.

The Court: You may be excused from the stand for that purpose, Captain.

The Witness: All right, sir.

The Court: Make the copy read just as the original reads.

The Witness: Yes, sir.

(Witness excused)

(Testimony of George W. Morgan.)

Mr. Bogle: I will recall Capt. Morgan.

The Court: Capt. Morgan resumes the witness stand at this time.

GEORGE W. MORGAN,

recalled as a witness on behalf of Petitioner, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Capt. Morgan, have you the copy of the dry-dock examination report of the "Denali" which was referred to in the hearing yesterday?

A. Yes, sir.

Q. Have you compared that with your original office record?

A. Yes, sir.

Q. What have you to say as to whether or not the copy— [942]

A. (Interposing) There is one error that I wouldn't like to see stand.

Q. We do not want any errors. We want it exactly the same.

The Court: That occurs in only one place?

The Witness: That is the only particular place, anyway.

The Court: It ought to be just like the original, Captain.

The Witness: Yes, sir.

The Court: Will it take you long to make the copy read just in words and figures as the original does?

The Witness: About ten minutes.

(Testimony of James Banner.)

The Court: Unless there is objection he may be excused from the stand and authorized to make the correction, so that the copy will be exactly like the original.

(Witness excused)

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Mr. Bogle: I would like to recall Capt. Banner.

The Court: Resume the stand, Mr. Banner.

JAMES BANNER,

recalled as a witness on behalf of the Petitioner, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Mr. Banner, have you since the court hearing yesterday compared your entries in the original drydock examination report of the steamship "Denali", April 4, 1935, with the copy of such report which was produced in the hearing yesterday? [943]

A. Does that allude to my personal entries?

Q. That portion of the drydock examination report which you personally entered in the book?

A. That is correct.

Q. There are no alterations or corrections?

A. No, not on mine; not on my part of it.

Q. It is a true and correct copy?

A. Yes, sir.

Mr. Bogle: That is all.

The Court: You may be excused from the stand, Captain.

(Witness excused)



(Testimony of William McDonald.)

The Court: You may proceed.

Mr. Bogle: There was a witness on the stand.

The Court: Capt. McDonald was on the stand, wasn't he?

Mr. Long: Yes, and he is here, Your Honor.

The Court: You may resume the stand, Capt. McDonald.

### WILLIAM McDONALD

recalled as a witness on behalf of the Petitioner, testified as follows:

The Court: This witness was being cross-examined, wasn't he?

Mr. Bogle: Yes, Your Honor.

The Court: You may resume the cross-examination.

### Cross-Examination (resumed)

By Mr. Ryan:

Q. Do you recall how the compass card of the "Denali" read [944] around the edges? Was it in points or degrees, or how, if you remember?

A. I think it was in both, but I am not positive sure whether the degrees were on the one in the pilot house, but I am sure the degrees were on the one on the standard compass.

Q. Do you recall that definitely and positively, of your own knowledge, about the card on the standard compass?

A. Yes.

(Testimony of William McDonald.)

Q. You recall it definitely?

A. Yes.

Q. Then why is it that the courses on the standard compass were always put in points and half points and quarter points, on the "Denali"?

A. It is not customary to steer by degrees on the inland waters.

Q. You do not have anything to do with degrees in inland waters?

A. No. We never steer—I never steer courses in my life in inland waters by degrees.

Q. They do not use the word "degrees" at all.

A. We do not use degrees at all, just points, quarters, halves, three-quarters, seven-eighths and five-eighths.

Q. If you told the man in the pilot house something about degrees he would say, "Well, my compass shows points; give me the points or quarter points or half points"—isn't that so?

Mr. Long: Just a minute; that is not a proper question. I object to the form of the question. Counsel is just arguing with the witness. [945]

Mr. Ryan: This is cross-examination.

The Court: Objection overruled.

The Witness: We never steer anything but points, quarters, three-quarters, five-eighths, on the inside waters. When we go off shore and off land, personally I steer degrees myself, but inland waters we do not, because it is pretty near impossible to steer by degrees in inland waters on the Alaska run.

Q. So your best recollection is that the card in

(Testimony of William McDonald.)

the compass house showed points, half points, and quarter points—that is, the pilot house compass, and that on the bridge showed that, plus degrees.

A. She had both.

Q. The bridge; I mean the one way up on top, outside.

A. Well, that is the standard compass.

Q. The standard compass, yes, and that is what you call the bridge compass, isn't it?

A. There is the pilot house compass, we call it, and the standard compass on top.

Q. The pilot house compass is the one that is inside the house, isn't that right?

A. Yes.

Q. That the quartermaster or helmsman steers by?

A. That is the pilot house compass.

Q. And then the bridge compass is the one way up on top of that house?

A. Yes.

The Court: Which you have heretofore referred to as the standard compass?

The Witness: Correct, sir. [946]

Q. That is ordinarily covered up with a canvas tarpaulin and secured, is that right?

A. Not all of the time.

Q. Well, practically all the time?

A. No, sir, not when we are running, except in snow and weather conditions, we cover it up then if the binnacle is not water-tight. Sometimes the brass cover that is on them gets a little bit loose,

(Testimony of William McDonald.)

and if the wind is blowing hard the wind might get in, so we keep her covered up in a case like that.

Q. Ordinarily, on a ship like the "Denali", when it is raining or misty or hazy you slip that tarpaulin or canvas over it, don't you?

A. If she was not tight.

Q. Do you recall positively, of your own knowledge, what the condition of that binnacle was on the standard compass on the "Denali"?

A. Yes, sir.

The Court: Ask him the question.

Q. What was the condition?

A. The condition was good.

Q. When did you examine it?

A. I examined it that very trip I was on her.

Q. On what date did you examine her?

A. The dates I can't recollect.

Q. Did you make any entry anywhere about it, what condition you found?

A. We make entries at all times and check it up with the compass whenever we can get a chance to take an observation of her, inside, on land, or by other observations. [947]

Q. Entries in what?

A. In the deviation book.

Q. Entries about the condition of the binnacle?

A. Yes, sir; the standard compass.

Q. About whether it was rain-tight or not, is that right? You made the entry whether it was rain-tight or not?

A. No.

(Testimony of William McDonald.)

Q. Or water-tight?

A. No; just make entries——

Q. (Interposing) You apparently misunderstood the question. Now then, a deviation card that showed only degrees wouldn't be of any use at all to anybody using the pilot house compass, would it?

A. You could hardly take any notice of that to apply to a course in inland waters.

Q. Certainly not. The deviation cards run in points, half points and quarter points, do they not, as prepared and put in ships like the "Denali" in this harbor by the compass adjusters?

A. I can't understand that question very well, sir.

Q. All right. Now, the deviation cards that are put on the ships, say on the "Denali", the deviation card for, say, the pilot house compass, it shows the deviations in points, quarter points or half points, or whatever it is, doesn't it?

A. No.

Q. So they can understand what the——

A. (Interposing) Not all the time, sir.

Q. Well, practically all the time?

A. No, sir. It is according to how the standard compass is [948] read. Some compasses have got the degrees on with the points, but those of the old-style hasn't got the degrees with the points.

Q. If the adjuster knows that the officers of that ship steer by points, half points and quarter points, and knows that the course are entered that way in the log book of the ship, always, he prepares

(Testimony of William McDonald.)

his deviation card according to points, half points, quarter points, etc.?

A. No, sir. Some trips the commander takes it by degrees. The last time I adjusted a compass it was by degrees. At other times there is another man down in the pilot house writing it by degrees, and hollering up to the adjuster when she is on that degree, and it is set on the magnet accordingly, by degrees.

Q. That is a different kind of ship from the "Denali"?

A. No.

Q. That is a case where they have degrees on the compass in the pilot house.

A. I don't recollect if there was any degrees in the pilot house of the "Denali", but that is the way the deviation is taken, by degrees, when they are swinging the ship.

Q. On what ship?

A. All ships I was ever on.

Q. On what ship? On the "Depere", for instance?

A. Yes.

Q. Have you that with you?

A. I haven't got it with me.

Q. Who drew up that deviation card?

A. It was adjusted by Max Kuner & Company.

Q. You haven't got it with you?

A. I haven't got it with me. [949]

Q. Who drew up that deviation card?

A. It was adjusted by Max Kuner & Company.



(Testimony of William McDonald.)

Q. Well, have you—well, you haven't got it with you, have you?

A. No, I have not got it with me.

Q. When did they adjust it?

A. On the "Depere"?

Q. Yes.

A. The "Depere" adjusted this summer—this spring.

Q. Certainly, as soon as she was taken out of the laid-up fleet, isn't that right?

A. No, sir. She was——

Q. (Interposing) Well, she was——

Mr. Long: (Interposing) Let him answer the question. You do not give him a chance to answer the question.

A. No, sir. She was adjusted when I was on her and I made a separate trip on her after she was taken out of the yard. The first trip that she made, Captain Ramsey was captain, and I went out on the next trip, and then she was adjusted.

Q. You were the one who had her adjusted, is that right?

A. I did not—I was on her when she was adjusted.

Q. And the first time that you had the authority you had the compass adjusted, is that right?

A. I didn't ask for it.

Q. You didn't ask for it?

A. No, sir.

Q. How did it happen to be adjusted then?

Mr. Long: Oh, I object to this. [950]

(Testimony of William McDonald.)

The Court: Objection overruled.

Mr. Long: It has nothing to do with the direct examination, Your Honor.

The Court: Objection overruled.

The Witness: What was the question?

(Question read)

Mr. Long: If you know.

A. I don't know. I never——

Mr. Ryan: (Interposing) Please do not suggest parts of my answer, Mr. Long.

Mr. Long: I want you to be fair with the witness.

Mr. Ryan: I am perfectly fair with him. I do not want you to suggest any answers to him.

The Court: Will counsel address their objections to the Court.

Mr. Ryan: Will you read the question and the answer of the witness?

(Question and answer read )

Mr. Long: Had you finished your answer?

The Witness: No.

Mr. Long: Just finish your answer.

A. I just joined the ship on my first trip when she was adjusted in Seattle.

Q. (By Mr. Ryan) Mr. Murphy ordered her adjusted, is that right?

A. No.

Q. What?

A. Mr. Murphy was not there.

Q. Who was there in his place?

A. I think it was Mr. McKinstry. [951]

(Testimony of William McDonald.)

Q. Mr. McKinstry ordered the compass adjusted on your ship?

A. I don't know who ordered it.

Q. Mr. McKinstry ordered the compass adjusted on your ship this spring, is that right?

A. I don't know who ordered it.

Mr. Long: Just a minute. I assume that he is referring to the trip this spring.

The Witness: Yes.

Mr. Long: And the evidence shows that Mr. Murphy was not with the Alaska Steamship Company at that time. This is two years after the "Denali", and it is certainly immaterial and irrelevant.

Mr. Ryan: I would like to have a little latitude on these matters, and I do not like for suggestions to be made by counsel to the witness while he is under cross-examination.

The Court: Objection overruled. He may answer the question.

The Witness: What was the question?

(Question read)

A. I don't know who ordered the adjustment, but I was told that the compass was going to be adjusted, and I didn't need to find out anything about that, but I just went out with an adjuster and adjusted her.

Q. When did you join her as captain?

A. The date?

Q. Yes.

(Testimony of William McDonald.)

A. The date very well I cannot recollect. It was this spring. The second trip that she made.

Q. In what capacity did you join her? [952]

A. As master.

Q. And the compass had not yet been adjusted, and it was adjusted afterwards mysteriously for some reason that had nothing to do with you as master of the ship, isn't that right?

Mr. Long: I object to the question with the word "mysteriously" in it, and I ask that that be stricken from the question.

The Court: Yes. It may be stricken.

Mr. Ryan: I will strike out the word "mysteriously", I will withdraw the word "mysteriously". Now, Mr. Reporter, read the question.

(Question read as follows: "And the compass had not yet been adjusted, and it was adjusted afterwards for some reason that had nothing to do with you as master of the ship, isn't that right?")

A. Yes, sir.

Q. What was the necessity for that adjustment, if you know, other than the fact that that ship had been in the laid-up fleet for several months?

Mr. Long: I object to the form of the question because it appears that the ship had not been in the laid-up fleet. He said it was the second trip from Alaska.

The Court: The objection is overruled.

Mr. Ryan: Read the question.

(Question read)

(Testimony of William McDonald.)

Mr. Long: I again renew my objection and ask that the last portion of the question be stricken because there is no evidence that it had been laid up for several [953] months.

The Court: The motion is denied. Read the question.

(Question read)

A. I don't know of any necessity, because I was not there.

Q. (By Mr. Ryan) In other words, you joined the ship as master—well, strike that out. Now, you said that you broke out a ship or ships from the bone yard on their first voyage, and I think you named the "Cordova". Will you give me the date that you broke out the "Cordova" from the laid-up fleet where she had been laid up for several months?

A. I cannot give the date, sir. I don't recollect the date that she was broken out.

Q. How many years ago was it?

A. Two years.

Q. Two years ago?

A. Yes, sir.

Q. And you say that the compasses of the "Cordova" were not adjusted two years ago when she was broken out from the bone yard, is that right?

A. Yes, sir.

Q. You are sure that they were not adjusted?

A. Yes, sir.

(Testimony of William McDonald.)

Q. And you went out in what capacity on that ship?

A. As master.

Q. And the compasses were not adjusted?

A. No, sir.

Q. And you took her out of the laid-up fleet?

A. Yes, sir. [954]

Q. Did you take any other ship out from the laid-up fleet where she had been laid up several months?

A. No, sir.

Q. You never did; just the "Cordova"?

A. I don't remember. We put them over there for a few days and then take them out again, and then lay them over there for a week when cargo don't offer to go out right away, and sometimes we break them out again in a week's time, and I did that on a few occasions with different ships.

Mr. Ryan: I don't know that I got your answer right. Will you read the answer?

(Answer read)

Q. Now, that is not what I asked you. Did you look at the deviation book or at the compass record book of the "Depere" to ascertain whether it showed any explanation for the adjustment after you joined the ship?

A. Yes, sir.

Q. All right. What did you find from that examination?

A. When I joined the ship, sir?



(Testimony of William McDonald.)

Q. Yes. In other words, in answer to the last question.

A. I found the compasses all right.

Q. And no necessity for adjustment, but they were adjusted anyway, is that what you want to say?

A. They were adjusted for some reason that I don't know because—I cannot explain that, but they were adjusted, and the compasses were not more than a couple of degrees or some other magnetic when they were adjusted.

Q. Well, who is this who has authority to adjust the [955] compasses without consulting the master of the ship?

A. Probably the other master that was there ahead of me. I don't know anything about that at all—who questioned—who asked for the adjustment. I cannot say.

Q. In other words, the master who took her out on her first voyage after she was laid up put in a request that her compasses be adjusted, isn't that right?

Mr. Long: Now, just a minute.

A. I cannot tell you that.

Mr. Long: All right. He said that he didn't know.

The Witness: I cannot tell you that.

Q. (By Mr. Ryan) Now, you know—

Mr. Long: (Interposing) I object to this and ask that counsel be fair to the witness. He is en-

(Testimony of William McDonald.)

titled to the protection of the Court, if Your Honor please.

The Court: The objection is overruled. The question has already been answered.

Mr. Long: What was the answer?

The Court: He said that he didn't know. Proceed.

Q. (By Mr. Ryan) Have you a copy of the deviation cards on the "Denali" that were in existence in 1934 when you left the ship?

A. I left them on the ship, sir.

Q. I ask you, have you a copy of them?

A. No, sir.

Q. All right. They are in points and quarter points and half points, are they not, the deviation cards on the compass—for the compasses on the "Denali" that were in effect in 1934 while you were master? [956]

A. The deviations in quarter points?

Q. The deviation is shown—

A. (Interposing) I don't remember that, whether they are in quarters or halves or three-eighths, or whatever they were. I don't remember that. But the deviation—how the deviation was written down on the deviation card I cannot tell you that—which way they were written down because as a rule I never take any notice of the deviation card.

Q. Did you take any notice of the deviation card on the "Denali"?

(Testimony of William McDonald.)

A. No, sir. I never take any notice of deviation cards for adjustments.

Q. You do not pay any attention to them at all?

A. No, sir.

Q. You think that compass adjustments are just a waste of time, is that it?

A. No, sir. But to a certain extent I do not go by them, but I take my own adjustments.

Q. Oh, you make your own adjustments?

A. Yes, sir.

Q. And you change the correctors on the compasses, do you?

A. I do not change anything, but I take my own observations, and I go by them regardless of the adjustment. I don't make my own adjustments, but I take my own deviations to get my bearings, and I go by that, because I cannot go by adjustments of the compass when the ship is swung in Seattle, light ship, and before starting to load cargo. I cannot go by that, or else I am a poor master.

Q. So you did not care whether the compasses of the "Denali" [957] were adjusted or not?

A. I do not care whether they are adjusted or not as long as I am on the ship myself and I can take my own.

Q. You would wait until you were stranded and busted up before you would take them, is that it?

A. No, sir.

Mr. Long: I ask that that question be stricken as highly argumentative.

(Testimony of William McDonald.)

The Court: In view of the question and also the answer, the motion is denied.

Q. (By Mr. Ryan) What do you suppose those adjusters carry on their business here and adjust compasses for?

Mr. Long: That is highly improper, Your Honor, and it is argumentative, and I object to it further on the ground that it is incompetent, irrelevant and immaterial.

Mr. Ryan: You asked him about the practice.

Mr. Long: I think that this witness is entitled to a reasonable protection.

The Court: If he knows, he may answer it. There was a great deal of latitude allowed in the record about custom and practice of the company and about adjustments.

Mr. Long: That I have no objection to. But he is asking this witness why compass adjusters carry on their business here; why they were in business. I don't know whether this witness knows, and it is not material if he does know.

The Court: It does not seem to me that it is important, but I will let the question stand, and he may answer it. [958]

A. What is the question?

Mr. Ryan: Read the question.

(Question read)

A. If they want an adjustment of the compass— if the magnets are out, an adjuster will fix the magnets up so that she won't have so much devia-

(Testimony of William McDonald.)

tion, but whether she has got one degree or fifteen degrees when I go away from her, that don't amount to anything to me, one degree or as much as fifteen degrees, that does not matter, and it is as easy for me to apply fifteen degrees as one to my course.

Q. In other words, you do not care whether your compass is out fifteen degrees or not on any and all headings, is that right?

A. I do, but I take it into consideration and act accordingly.

Q. Now, name the magnets that were in the compass or in the binnacle of the compass on the "Denali".

A. I don't go near the magnets at any time.

Q. Then you never examined them to find out whether they were out of place, did you?

A. No.

Q. You would not?

A. I would not—

Q. (Interposing) You don't even know the names of them?

A. I would know if they were out of place.

Q. That is not my question. You do not even know the names of them, do you?

Mr. Long: What was that answer?

(Answer read) [959]

Q. (By Mr. Ryan) Now, name the magnets so that you can identify them and separate them from each other.

A. I cannot name them.

(Testimony of William McDonald.)

Q. Well, name the position of, say, the B magnet.

Mr. Long: What magnet?

The Witness: What magnet?

Q. (By Mr. Ryan) You never heard of the B magnets, is that right?

A. Yes. They are all underneath the compasses.

Q. Now, describe exactly—

Mr. Long: (Interposing) Just a minute. Had you finished your answer, Captain?

The Witness: Yes, sir.

The Court: In the future when you ask the witness a question do not characterize it with the previous answer made by the witness.

Mr. Ryan: All right, Your Honor.

Q. (By Mr. Ryan) Describe the position in which the B magnets of the "Denali" were located while you were on that ship?

A. They were underneath the compass.

Q. Yes. But what was their position?

A. I don't know what their position was. I couldn't tell you that I ever looked at the magnets on the "Denali".

Q. Where was the red magnet—by the way, how many red magnets were there?

A. I never looked at the magnets on the "Denali".

Q. Then, in order to ascertain whether any of those magnets are out of place, you would have to have a compass adjuster to look at a compass, wouldn't you? [960]



(Testimony of William McDonald.)

A. Yes, sir. That is the time when we want an adjuster, when the magnets are out and we can't find out when the compasses are not right. When the magnet is drawn to any extent and there is a big deviation, that is when we call for the adjuster, but when the compass has not got any deviation to bother us more than a few degrees on either side, I don't consider it at any time necessary to call upon an adjuster—until that happens.

Q. Your personal opinion is that it is not necessary to call in an adjuster unless the deviations are more than fifteen degrees on all headings, is that right?

A. No, that is not right.

Q. Well, what is it then?

A. As long as the compasses gets out for two or three degrees or four degrees, it is not necessary to call for an adjuster, but when they get out up to big deviations—five, ten and up like that, then we call for an adjuster. Sometimes they stay for two, three or four years, if we do not carry too much iron and stuff like that in the ships, and then they come right back again, the compasses, to their natural position, and as soon as they get back to their natural position when the ship is discharged, it is not necessary to call for an adjuster, because the cargo in the ship is changing the deviation.

Q. Now, your testimony is if there is five degrees deviation on any heading, the compass should be adjusted, is that right?

(Testimony of William McDonald.)

A. I am just giving you a demonstration, you see.

Mr. Ryan: Read the question.

(Question read) [961]

A. Well, if it is five degrees all around the compass, yes, I would call for an adjustment, but we never get that.

Q. You would wait until they were four degrees all around on every heading of the compass before you would call in an adjuster, is that right?

A. I would not wait. I would just use my own judgment whether I wanted it or not. If the compasses were not steady, or in any way that I was doubtful about them, I would call for an adjuster to—for a new adjustment then.

Q. Just what effect do the red magnets have so far as their influence as to steadiness or constancy of the compasses are concerned?

A. I cannot tell you that, sir.

Q. Well, suppose a compass adjuster—suppose Mr. Murphy called in a compass adjuster—a shore adjuster, and he handed you a deviation card which showed five degrees deviation on, say, four headings of the compass—would you take that—would you accept that or would you report it to Mr. Murphy?

A. It never happened, and I don't know what I would do in a case like that, but that was never known to my knowledge—an adjustment on a deviation card like that.

(Testimony of William McDonald.)

Q. What do they bring the deviation down to when you have a compass adjuster to adjust the compass?

A. They bring the adjustment down to magnetic on some headings and on other headings down to half a degree or a degree, and sometimes a degree and a half.

Q. So that a compass that shows a greater number of degrees than that is one that could be put in safer condition by [962] a compass adjuster, isn't that right?

A. Yes, sir. She could be adjusted like that if you are going to adjust her every trip.

Q. Well, it costs very little money to have a compass adjuster or a shore compass adjuster to go on board and adjust, isn't that right?

A. I don't know how much it costs even. I never inquired about that.

Q. Well, whose job was that?

Mr. Long: What was the question?

The Witness: That was for the office.

Mr. Long: What was the question?

(Question read)

Mr. Long: I do not think that that is proper.

The Court: No, that is not proper.

Mr. Ryan: Well, I will withdraw that.

Q. (By Mr. Ryan) Who attended to the incurring of that expense under ordinary practice?

A. I don't know. The adjuster sends his bill into the office, and I don't know who pays for it or

(Testimony of William McDonald.)

nothing else. I am not even interested in that. All I care is to have it adjusted, and as long as it is adjusted, that is all I care about it.

Q. You never had authority since you have been with the Alaska Steamship Company to call in a shore compass adjuster in the Port of Seattle, have you?

A. Yes, sir.

Q. Yes.

A. Yes, sir.

Q. Without taking it up with the home office?  
[963]

A. When I feel that I want an adjuster, I take it up with the home office and then I swing the ship whenever I want to.

Q. Your answer to that question is that you have no authority to do it without consulting the home office and getting their authority, or letting them do it, isn't that right?

A. I think I have got the authority. My authority was never questioned when I asked for it.

Q. Did you ever, yourself, give an order to the Northwest Instrument Company or to Max Kumer, or to any other compass adjuster—did you ever walk into their office and tell them to adjust this compass?

A. No.

Q. You had no authority to give such an order?

A. I don't know about the authority. I have got the authority to send in for it, and it was never refused to me.

(Testimony of William McDonald.)

Q. Yes, but when the authority came they never gave you the authority to do that. They did that, isn't that right?

A. My authority—yes, I got the authority of doing anything. The company gives me any authority, and I have got it myself. I take it, the authority of seeing at all times that my compass and my navigation instruments are kept up to date, and it has never been questioned so far yet.

Q. So far as you are concerned your personal opinion is that it is of practically no use to have an adjustment of a compass made when the ship does not have her cargo aboard, isn't that right?

A. Say that again, please.

(Question read) [964]

Mr. Long: Are you referring to an adjustment by an independent adjuster?

Mr. Ryan: Please don't interrupt. This is my cross-examination, and if you have an objection to make, make it to the Court.

Mr. Long: Well, then, I will make the objection that the question be made more definite and certain. Specify whether the adjustment is to be made by an independent adjuster or by this man himself.

The Court: The objection is overruled. He may answer the question if he can.

The Witness: What is the question?

The Court: Read the question again, and let us keep our minds on it.

(Question read)

A. No.

(Testimony of William McDonald.)

Q. (By Mr. Ryan) Well, explain your answer.

A. My answer is that if the compasses are out when the ship is light, I would call for an adjustment, if I found that the compasses were too much out. I would call for an adjuster then, if the ship was light and without any cargo in her.

Q. Now, when you joined the "Depere" this year did you make any examination of her compasses or swing ship?

A. As soon as I joined her—the day that I joined the "Depere" I think the compass was adjusted, and it was a day or two, if my memory is right, after I joined her before I ever went out on her.

Q. What date was that?

A. I don't recollect the date. [965]

Q. Was it Max Kuner who adjusted the compasses?

A. Yes, sir, it was Max Kuner who adjusted the compasses in Seattle Harbor.

Q. All right. Now, the practice that you followed—suppose the ship is in continuous operation and she comes down to Seattle from Alaska, and she has not yet loaded her cargo, as I understand your testimony on direct examination, you do not make any observations for deviation or swing ship, or anything like that until after the cargo is loaded, is that right?

A. No. I swing the ship personally at all times myself.



(Testimony of William McDonald.)

Q. Now tell me—

A. (Interrupting) Whether she is light or empty, if I am doubtful about the deviation and if I see—if I get the idea that the compasses are anywhere out, I swing ship myself.

Q. Have you swung ship on the “Depere”?

A. Yes, sir.

Q. On what date?

A. Well, I don't remember the date, but I have got it marked down in the deviation book.

Q. Have you got it marked in the log book?

A. I never mark deviations in the log book. I have never seen it done that way.

Q. I am not asking you about deviations. Don't you know what swinging ship means?

A. Yes, I do.

Q. Then confine your answer to the question. I am asking you, have you swung ship on the “Depere”?

A. Yes, sir. [966]

Q. On what date?

A. I don't remember the date, but it is down in the deviation book.

Q. On how many points did you swing the ship?

A. Sixteen points if I remember right. It might be fifteen, or it might be—

Q. (Interposing) Did she have cargo aboard, or not aboard?

A. She was fully loaded.

Q. She was fully loaded?

(Testimony of William McDonald.)

A. Yes, sir.

Q. Have you ever swung ship when the ship did not have her cargo aboard?

A. Yes, sir.

Q. On what ships, and where?

A. I don't remember either that date.

Q. How many years ago?

A. This year.

Q. This year?

A. Yes, sir.

Q. On what ship?

A. On the "Depere".

Q. You swung ship without any cargo on her?

A. I swing ship at all times when I get a deviation on all headings—whenever the opportunity serves. There is not an hour in the day that that is not done when the opportunity serves as that is the only thing that we look out for, for the deviation of the compass for our own information in case of thick weather.

Q. Now, let us keep to the point. I want to find out the date that you say that you swung the "Depere" without [967] any cargo aboard.

A. I have got it in writing, but I cannot tell you right offhand.

Q. Have you got it on your ship?

A. Yes, sir.

Q. Will you produce it tomorrow morning, or Tuesday morning, rather?

(Testimony of William McDonald.)

Mr. Long: No, he won't because he won't be here.

Q. Then will you produce it at two o'clock this afternoon?

A. I will be very glad to do it. We will produce it.

Mr. Bogle: I still object on the ground that this is immaterial, a matter of a year or two after the date of the accident which is involved in this suit. A practice which is in effect or was in effect then, a year or two after the accident, could not affect the practice in connection with this accident two years previously.

The Court: The Court deems it conceivably material as affecting the weight of this witness' testimony.

Q. (Mr. Ryan) How long did it take you to swing ship?

A. It didn't—well, I think—at two o'clock this afternoon I think you will find that in the book in my own handwriting.

Q. Well, tell me how long.

A. Well, I guess about fifteen minutes or somewhere around that. That is about all it takes.

Q. Only about fifteen minutes to swing ship?

A. That is all.

Q. On how many headings? [968]

A. Sixteen.

Q. One minute on each heading, is that it? One minute to get on a heading and complete it, and then go on to the next one?

(Testimony of William McDonald.)

A. You don't even have to have a minute. You can do that in half a minute.

Q. You can do that in half a minute?

A. Yes, sir. As long as you get the ship steady on that heading, that is all that is necessary.

The Court: I will have to require you to finish the examination of this witness in fifteen minutes, Mr. Ryan.

Mr. Ryan: Well, Your Honor, I will try to, but this I consider quite important. There are some other points—you mean on all subjects?

The Court: On all subjects, in view of the great amount of time and the latitude that I have given you on this collateral matter. The Court thinks that you have gone about far enough into it, and will give you fifteen minutes to finish your cross-examination.

Mr. Ryan: I respectfully except to that. I do not think that this is collateral matter in view of the testimony of this witness on direct as to practice. It is the most direct way that you can catch the man on practice.

The Court: The exception is allowed.

Mr. Ryan: Well, I have to abandon that because I have so many points to cover with this witness, Your Honor, and I except to my having to leave that subject under the circumstances and restrictions. [969]

Q. (By Mr. Ryan) Now, on your direct examination you testified that when the ship is swung

(Testimony of William McDonald.)

in the Sound here the adjuster makes the compasses magnetic, and then after the cargo is taken on board you get that deviation yourself and apply it to the course that you steer?

A. Correct.

Q. That is so, isn't it?

A. Yes, sir.

Q. In other words, the shore compass adjuster is the one who ascertains the deviations before the cargo is aboard, and after it is aboard you swing ship, is that right?

A. Swing ship for our own information after cargo is on board, sir.

Q. And the one who does the swinging before the cargo is aboard, when she is light, is the shore compass adjuster? That is his job, isn't that right?

A. It is his job when he is directed to do so and he is there, but he is not there every minute when she is in Seattle here, and we do that ourselves. He is not there on ship all the time.

Q. The man who orders him to come over is Mr. Murphy, isn't it?

A. Whoever is in charge, sir.

Q. Mr. Murphy or whoever is acting while he is away?

A. Yes, sir, that is correct.

Q. Now, on this voyage that you made on the "Denali" in the latter part of 1934 there was nothing in your commander's report about fog, was there?

(Testimony of William McDonald.)

A. No, sir. I didn't see it.

Q. But you nevertheless think that there was fog for two [970] hours, is that right?

A. I remember very well where we had the fog.

Q. Where was it?

A. Southbound entering Granville Channel early in the morning.

Q. And you had it for two hours?

A. Yes, sir. We had more than that, but I do not remember how much. But I remember that distinctly.

Q. Now, you went up on the Inside Passage and came back on the Inside Passage, didn't you?

A. Yes, sir. [971]

Q. Isn't it true that when a ship that sails the Inside Passage has a light in sight, if the weather is clear at all times from leaving Seattle until coming back—that is, there is always a light in sight—she goes from light to light, and from light to light.

A. No, sir; that is not true.

Q. How many miles apart are the lights on the Inside Passage?

A. I didn't measure them off, and I haven't got that in my memory, how far they are apart. Some of them are half a mile apart, and some of them as much as 25 miles apart.

Q. Name two lights that are 25 miles apart on the Inside Passage.

A. Well, I can't remember it offhand, without thinking it over, but there are—



(Testimony of William McDonald.)

Q. (Interposing) Can you remember it at all?

Mr. Long: Let him finish his answer.

Q. Any instance of two lights on the Inside Passage which are 25 miles apart.

A. Well, 25 miles might be too little, might be too small for some of them, but in the Canadian side some of them are a long distance apart. Take Boat Harbor Light, and take Kingcomb Harbor Light—

Q. (Interposing) To what other light?

A. To Kingcomb Harbor Light.

Q. Boat Harbor Light to Kingcomb Harbor Light, is that right?

A. Well, I think you will find out that is anything from 15 to 25 miles—from 15 to 20 miles. That is a guess, I am not positive of that.

Q. But that is the greatest distance between any two lights on the Inside Passage that you can think of, isn't that [972] right?

A. One of them that is as far apart as any that I can recollect at present.

Q. Of course if you are half way between those lights they are only 12½ miles away, assuming those two lights are 25 miles apart, is that right?

A. Yes, it would be.

Q. So that for all practical purposes, in clear weather you practically steer from light to light and from light to light, as you go up the Inside Passage and come back, isn't that right?

A. No.

Q. Name a place where you do not do that.

(Testimony of William McDonald.)

A. In several places on the Inside Passage we steer by local knowledge. It is not lights we go by, it is the land, landmarks and headings, what we call headings, when the ship is heading to a certain point, a certain hill. In that case you keep the hill on one side of your bow, on the left hand side or the right hand side, as it should be. That is what we go by mostly, local knowledge, as far as the Inside Passage is concerned.

Q. That is, you steer in the day time and on a clear night?

A. Yes, sir.

Q. From point to point, that is from hill-top to hill-top; you keep close to this and close to that? In other words, it is piloting all the way up?

A. It is piloting all the way up, that is correct.

Q. And you do it by those hill-tops and your local knowledge, and not by your compass or the lights?

A. Correct. [973]

Q. And then at night time on the Inside Passage, supposing it is so dark you cannot see these hill-tops, then you do it by these lights, which are staggered at close intervals all the way up and all the way back, isn't that right?

A. No, sir.

Q. Well, why isn't that right?

A. Sometimes you come up to a light and don't see it until you are 1500 yards away from it.

Q. I am asking you about a clear night.

(Testimony of William McDonald.)

A. On a clear night the light might be closed in by a point, and you cannot see it.

Q. What distance does the chart show those lights are visible at a height of eye of 15 feet, practically all the lights on the Inside Passage?

A. I couldn't tell you that, sir.

Q. What is the visibility of most of the lights on the Inside Passage?

A. Oh, nine miles, some of them; some of them ten, up to 12. That is the average on the Inside Passage, from Seattle to Ketchikan, for instance, 9, 10, up to 12 miles.

Q. That is the highest visibility, you think?

A. In the sounds they are more powerful. In the Inside waters they are just little blinkers, you can hardly see them sometimes—like a lantern.

Q. On the steamship "Denali" what is the height of eye above the surface of the water?

A. 35 to 40 feet.

Q. On the bridge, I mean.

A. If she is light, 35 or 36 feet. [974]

Q. Are you sure about that?

A. Positive.

Q. You say 35 feet if she is loaded?

A. If she is light.

Q. 35 feet if she is light?

A. Yes, sir.

Q. And 36 feet if she is loaded?

A. I said from 35 to 36 feet when she is light.

(Testimony of William McDonald.)

Q. When she is loaded what is the height of the eye of the officer on the bridge above the surface of the water?

A. It is 25 feet.

The Court: Not the height of the eye from the bridge, but you mean from the water, the height of eye from the surface of the water?

Mr. Ryan: Yes.

The Witness: Yes, sir.

Q. That is what I mean, the height of the eye of the officer standing on the bridge navigating, above the surface of the water?

A. Yes.

Q. You say it is 25 feet when fully loaded?

A. When she is loaded.

Q. Suppose she is not fully loaded; suppose she has 18 feet forward and 19 feet aft?

A. We never have any occasion to measure that except when we are offshore, in taking observations. Then that is a very important thing we have to do, even measure that with the lead line for our observations. We do that at all times to get the height of the eye for a problem in navigation. But on the inside we do not do that. It is [975] not necessary, because we do not work any navigation problems. But it is necessary when we work navigation problems to get the height of the eye.

Q. Exactly what navigational equipment was on board the "Denali" when you laid her up in October, 1934?

(Testimony of William McDonald.)

A. Pardon me?

Q. Can you give the names of each of the things? For instance, you said she had a full supply of charts?

A. Yes.

Q. Will you name the charts which were on board when you left her?

A. No, sir. I don't believe there is anybody going to Alaska, or anybody in the country that can name them.

Q. I am asking you the names of the ones that were on the "Denali"?

Mr. Long: He said he had a full set.

The Witness: I cannot answer that. It is impossible to do that.

Mr. Long: Several hundred of them.

The Witness: Several hundred of them on board them ships.

Q. When were they put on the ships?

A. Since the time they started, adding onto them to the present time.

Q. A chart that is old like that, and is not brought up to date, isn't of any use to anybody on a ship, is it?

A. No, sir. Sometimes they lay in there and we throw them overboard. We clean up, as they say, and throw the old charts away when the new editions come. We keep the new editions and throw the old editions overboard. [976]

Q. Were the drawers jammed full of charts?

(Testimony of William McDonald.)

A. Full of charts; three of them, three drawers.

Q. All ages, and everything else, isn't that right?

A. Yes. It is the same on all the ships. The one I am on today is the same thing.

Q. Why didn't you dispose of all the charts that were too old for safe use, and only keep on board charts which were either just issued or up to date, or on which corrections had been made, and they had been brought up to date?

A. There was none of them that was too old, that I know of, and we got the corrections as the Hydrographic Survey put out the notations. We renew the charts at all times unless we get a new chart. If a new chart comes out we get the number of the chart and we go down here in Seattle and put in an order for it, for the new chart, for the new edition. That is the way we keep ourselves in charts. That is for our own information.

Q. You put in a requisition for charts when you were master of the "Denali"?

A. I never put in a requisition, but I ordered the requisition put in.

The Court: Five more minutes.

Mr. Ryan: If the Court please, I must respectfully except to this. There are several points here that I simply must cover by this witness.

The Court: The exception is allowed. You have five more minutes, Mr. Ryan.

Q. (By Mr. Ryan) You cannot tell us what charts were on board the "Denali" when you left her in October, 1934, [977] can you?



(Testimony of William McDonald.)

A. I cannot tell you offhand every one that was on board, but for Southeastern and Southwestern Alaska they were all on board of her.

Q. Suppose the records of the company show that they were not supplied, certain charts that were important.

Mr. Long: That is arguing with the witness.

Mr. Ryan: I am asking him to suppose that.

Mr. Long: Well, what is the difference?

The Witness: They never denied me anything I ordered in the way of aids to navigation. There was never anything denied to me to this date.

Q. The charts that were on the "Denali" were supplied before you got on her?

A. Yes, sir.

Q. Did you ever personally go through every chart on the "Denali" and make a record of what it was and the date it was supplied, and that sort of thing?

A. I didn't do that. It wasn't necessary.

Q. What do you mean by a navigation problem? You said that no navigation problems are done when ships go on the Inside Passage.

A. That is sun observations for positions. We only work that at sea. The rest, on the inland waters, on the Alaska run, it is what I call local knowledge, on the inland waters, sir.

Q. What do you mean by "at sea"?

A. That is off shore, when we get outside in the ocean.

(Testimony of William McDonald.)

Q. Out on the Pacific Ocean?

A. Yes, sir. [978]

Q. Say Hecate Strait, going from light to light, or around Vancouver Island, or through Caamano Passage, or going up through the Inside Passage, you do not take time sights in there in the log book every day, or anything like that?

A. Well, if you are going through Hecate Straits, if you go up through the day there you might take an observation for your own information, sometimes.

Q. Have you ever gone up through Hecate Strait?

A. Yes; very, very often.

Q. Did you go through Caamano Passage?

A. I was through there a few times, but quite a number of years ago.

Q. When did you last go through Caamano Passage?

A. Quite a number of years ago.

Q. On what ship?

A. I was in the "Admiral Evans". That has been a long time ago.

Q. Were you a licensed officer of the ship?

A. No; I was not a licensed officer of the ship the last time I was through there.

Q. Do you know of any ship on which you ever took any sight of the sun going up through Hecate Strait?

A. Yes.

Q. What ship?

(Testimony of William McDonald.)

A. On the "Cordova", going up there, four or five years ago, Hecate Strait.

Q. When was that?

A. The date, sir?

Q. Yes. The last time you were on her when you took a time [979] sight, on the "Cordova", going up through Hecate Strait.

A. Well, I couldn't recollect the date I took it, but I took them at all times when convenient, when going up Hecate Straits during the day.

Q. How did you determine the time on the steamship "Denali", the time of day?

A. Determine the time, sir?

Q. Yes; the time of day, on the steamship "Denali"; how did you determine the time?

A. By our chronometer.

Q. By her chronometer?

A. Yes.

Q. Where was her chronometer?

A. In the chart house.

Q. What make was it?

A. I don't remember the make, sir.

Q. Are you sure there was a chronometer in the chart house?

A. Positive sure. There might have been two. As a rule there is two. I know there was one. There might have been two. There is two chronometers on all of them, but I know there was one.

Q. You are sure about that?

A. Yes, sir. I am sure there was two.

(Testimony of William McDonald.)

Q. When a ship lies on a certain heading for a long time what happens to her compasses?

A. I couldn't tell you that until I try her out. I would have to try it out to answer that question. I am not going to predict what is going to happen. I must see what is going to happen for myself.

Q. Why do they take azimuths every day on a ship, even though [980] she is steaming the same course?

A. Sometimes for our own information, so that we will have all the headings when we will need them, in case of thick weather. Then you can, of course, get an idea of the deviation, if it is east or west, to apply to the course in case of thick weather. And for our own information.

Q. It is because the deviation tends to change, isn't that right?

A. It changes by latitude, and by cargo that is on board the ship, and by working in heavy seas. The deviation sometimes changes some.

Q. That is the only reason you know of, of your own knowledge?

A. Probably there are some more reasons I know about, too.

Q. Are you familiar with "Bowditch's Practical Navigator"?

A. Yes.

Q. Have you ever seen the book?

A. Yes, sir. I carry it with me wherever I go.

(Testimony of William McDonald.)

Q. What does Bowditch say about the effect on compasses of a ship lying up for a long period?

A. They are liable to have a deviation.

Q. Certainly.

A. I couldn't tell you how much until I try them out. That is what I mean, sir. I must try the ship out to find that out.

Q. You would not believe Bowditch, would you?

A. Yes, I would. I am a great believer in Bowditch.

Q. If Bowditch says that the deviations change if the ship lies on a certain heading for a considerable period——

Mr. Long: Just a minute, please——

Q. (Continuing) ——would you accept that?

[981]

A. No.

Mr. Long: Just a minute; if Your Honor please. I think the proper way to cross examine the witness by an authority is to read the part of that authority to the witness, and I ask counsel to produce the page of Bowditch to which he refers, in all fairness to this witness. How can we check it?

The Court: Objection sustained: and this will close the cross examination, unless upon being advised of some specific inquiry that has not been covered, and which upon consideration the Court deems is worthy of further inquiry, and the Court thereupon assents. Under those conditions there may be some further cross examination, but other-

(Testimony of William McDonald.)

wise not. At this time we will take a five minutes' recess.

Mr. Ryan: I respectfully and earnestly except to the ruling of the Court, and state that it is unduly handicapping and restricting the right of cross examination, in view of the great latitude allowed on direct examination to counsel for Petitioner in examining this witness with reference to practices, general practices of this company and other companies, and all things that other people have done.

The Court: The exception is allowed.

Mr. Ryan: I will say that I haven't had a fair opportunity to cross examine this witness, and I take the exception.

(Recess)

The Court: You may proceed.

Mr. Long: I have just a couple of questions of [982] Capt. McDonald, Your Honor.

Mr. Pellegrini: I have one or two questions I would like to ask Capt. McDonald.

The Court:

Q. (By Mr. Pellegrini) Capt. McDonald, did you ever take the "Denali" through Hecate Straits?

A. No, sir.

Q. You have never taken her through there or Caamano Passage, either?

A. Through Hecate Straits?

Q. Yes.

A. No; I did not.



(Testimony of William McDonald.)

Q. As a matter of fact, Captain, you consider a compass an essential instrument in the navigation of a ship, do you not?

A. Yes, sir; I do.

Q. And you consider that a compass should be right, do you not; that the compass should be properly adjusted and compensated?

A. The compass should be right, or you should know whether she is right or wrong.

Mr. Pellegrini: That is all.

#### Redirect Examination

Q. (By Mr. Long) Who should find out, Captain?

A. The master.

Q. The master of the ship?

A. Yes, sir.

Q. What is a chronometer, Captain, for the record?

A. A chronometer is an instrument like a clock.

Q. A sea-going clock, in other words? [983]

A. Yes.

The Court: Will you restrict your examination as much as possible?

Mr. Long: I will do that, Your Honor.

Q. Captain, how many years do you say you have been sailing for the Alaska Steamship Company as a licensed officer?

A. Since 1921.

Q. Have you ever requested a compass adjustment on your ship and have it refused by Mr.

(Testimony of William McDonald.)

Murphy, or anyone else of the Alaska Steamship Company?

A. No, sir.

Q. The charts that you had on board the "Denali" on the voyage in 1934, at the close of that season, were those charts corrected to date?

A. Corrected up to date, the way the Hydrographic office gave them to us.

Q. By notices to mariners?

A. Yes, sir.

Q. Were there some duplicate charts on the ship, do you recall?

A. Two of the same kind, you mean?

Q. Yes.

A. Yes; lots of them.

Q. And those charts included all for Southeastern and Southwestern Alaska?

Mr. Ryan: I object to the leading character of this examination.

Mr. Long: I am trying to shorten it.

The Court: Objection sustained.

Q. (By Mr. Long) What area of Alaska do those charts cover? [984]

A. All of Southeastern and Southwestern Alaska.

Q. What other areas of the waters from Seattle up to Alaska?

A. Puget Sound, British Columbia, all the charts from Seattle up to Alaska, every one you can find. We always got every chart we could find anywhere.

(Testimony of William McDonald.)

Q. Is there a catalogue published listing those charts?

A. Yes, sir. The Hydrographic office issues a catalogue with the number of each chart.

Q. And you had those on board?

A. Yes.

Mr. Ryan: If the Court please, I strenuously object. This witness has testified he didn't know, he never examined the charts on the "Denali" to make a list of them and ascertain what was on board.

The Court: Objection sustained.

Mr. Bogle: That is on the ground that it is leading, Your Honor?

The Court: Yes.

Q. (By Mr. Long) Capt. McDonald, you testified in response to Mr. Pellegrini's question that you had never taken the "Denali" through Hecate Strait; have you ever taken any of her sister ships through Hecate Strait?

A. Yes, sir.

Q. There is one other term that I wish you would define, if you can, and that is referring to the term "local knowledge". Would you tell the Court what you mean by "local knowledge", as applied to Alaska navigation?

The Court: Oh, I think the Court understands that from the evidence already.

Mr. Long: All right. I just wanted to get it in the [985] record, that is all. That is all.

(Testimony of William McDonald.)

The Court: Any further examination, or recross-examination by reason of this redirect examination?

Mr. Long: I have just one other question.

Q. (By Mr. Long) Do you have a pilot's license for Southeastern and Southwestern Alaska?

A. Yes.

Q. Does the examination which you take for that license—well, that is going to be leading, and I will withdraw it—what information is required of you in securing a pilot's license for Southeastern or Southwestern Alaska, insofar as local knowledge is concerned?

Mr. Ryan: That is objected to on the ground that it is not proper redirect examination.

Mr. Long: I will ask it on direct examination, that one question, then. I think it is proper, Your Honor, but to save time and argument about it I will ask it either way Your Honor thinks fit.

The Court: You may recall him on direct to answer that.

Mr. Long: Just that one question. Will you read it?

(Last question read.)

The Witness: It requires so many years on the run, and it requires you to have local knowledge of the territory you are taking your license for, the lights, etc., and the aids to navigation.

Mr. Long: Anything else?

The Witness: That about covers it all.

Mr. Long: How about principal landmarks, Captain?

Mr. Summers: That is leading. [986]

The Witness: I think I put that in.

Q. Very well, if you did. Capt. McDonald, is the Inside Passage referred to a straight channel all the way to Alaska?

A. No.

Q. So that you have lights that you can see from one to another, like you are running down the street here?

A. No, sir.

Q. Is it very irregular?

A. Yes; some parts of it.

Mr. Long: That is all.

The Court: Any further questions by reason of this further redirect examination, and direct examination?

Mr. Ryan: Yes.

#### Recross Examination

By Mr. Ryan:

Q. You just testified that the charts were all corrected up to date; you do not mean to say that while you were on the "Denali" anybody ever went through every one of those drawers and pulled out every chart and brought it up to date, do you?

A. If I could explain that to you, sir—

Q. (Interposing) No; just answer the question, please.

(Testimony of William McDonald.)

Mr. Long: I ask that the witness be allowed to explain it.

The Court: The question may be answered "yes" or "no", and if it is necessary in order to make the answer complete that he give an explanation, then the Court will give him that opportunity afterwards. [987]

The Witness: No; I did not examine all the charts.

Mr. Ryan: That is all.

Q. (By Mr. Long) You can now explain what method is employed in bringing your charts up to date. Please explain your answer.

A. We have three drawers for charts in all them ships, in all the freighters of the Alaska Steamship Company, all them sister ships, the "Denali", the "Depere", etc., them sister ships. Suppose in leaving Seattle, then we pick them out of that drawer and take them to the lower drawer, and then we reverse them from drawer to drawer, and go through all them charts every trip, and the charts are kept in rotation so that you can always put your hand on them, from drawer to drawer. For instance, you take them from this drawer first, and then put them in the other drawer, and you do that on the way back, just the reverse. Then in a big locker on the other side there are the harbor charts. You take the chart for Kotzebue Sound, I would never take that up in that country, but I would check whatever places I was going to go into,



(Testimony of William McDonald.)

and I would see that all of those charts were there at that time, every chart that I might require. That locker was full of charts, but I never took all the charts out, all of them.

Mr. Long: That is all.

The Court: Anything further?

Q. (By Mr. Ryan) The Petitioner has produced here a list of charts which they say were supplied to the "Denali", [988] and it appears they were supplied in sort of sets, under requisitions or orders of some sort that have not been explained yet. Whoever was getting it up was apparently getting up some sort of a set for the voyage, or for the summer, all new charts. Now, when those charts came aboard the ship, do you mean to say they were thrown in with all the old charts, or were they kept separate as a set for the voyage?

A. No, sir; they are put in with the rest of the charts. Sometimes we get new charts that we never see for years, probably, but when a new edition comes out they go in rotation with the old charts, wherever they fit in. You can never tell when you are going to use them. The same as for Kodiak Island, on this trip, I would file the new edition in *which* those for Cook's Inlet. I would order that new edition, put it in the drawer, because I might get orders from Seattle, or from an agent in Alaska, and then I would have that chart. We do that for our own information, for our own guidance.

(Testimony of William McDonald.)

Q. So if you get one of those sets of charts, and on the list it appears that there is a repetition of certain numbers each time—for instance, No. 8102——

A. Yes.

Q. Under your story they would just be thrown in with the old charts, so if you wanted one and reached in to pull it out it might be an old chart, several years old, or might be the latest chart, or you would have to be in searching around to find the latest chart among a lot of mixed-up charts?

A. No, sir. They are all numbered. The South-eastern Alaska [989] charts are all numbered by themselves, and they come in rotation, such as for Ketchikan, Wrangell, Wrangell Narrows, Petersburg and Juneau. You just pick them up one by one. Once in a while one will get mixed up, one underneath another, but that is all. We keep them all together.

Q. That little rotation set that is for actual use on the voyage, that is the one that is covered by the supplying of new charts, isn't it? There are only a few of those for a particular voyage, in view of the fact that you know the particular ports, isn't that so?

A. They are all in together; the charts are all in together.

Q. I thought you said the charts you did not use were kept in a separate place.

A. That is harbor charts. [990]

(Testimony of William McDonald.)

Q. All right. Now, the charts that you don't use. For instance, say the charts for Cape St. Elias and the charts for Kodiak Island, and that sort of thing, you would not use those at all, would you?

A. Well——

Q. (Interposing) You know that you would not use them on the way going up to Ketchikan, don't you?

A. I would not know whether I would use them or not. I might, and I might not.

Q. Suppose you had orders to go up to certain ports, up to Ketchikan and back, or up to Washington Bay and back——

A. (Interposing) Yes, sir.

Q. (Continuing) Do you mean to say that the charts for that voyage that had come in in a new set supplied by Mr. Murphy's office, that they just would be thrown in with all of the other charts for all of Alaska even for areas that were hundreds of miles away from there?

A. I have never seen that happen in ordering new charts for any of these ships except a few whenever you needed them. When a chart is going out or is old, you are given a new one. When a new edition would come out you get that edition and put it in the regular form where it belongs, the same as we change the charts around the Narrows every so often. We put her alongside the Petersburg chart, or whatever chart it might be, and the old charts that we use are mixed up with the new charts.